

Common
Fishes



ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: XLVI

DATE: September 14th, 1988

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

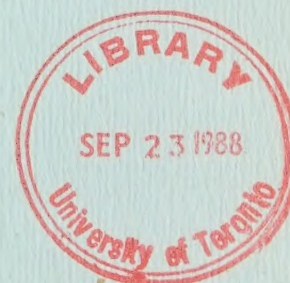
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Wednesday, September 14th,
1988, commencing at 1:00 p.m.

VOLUME XLVI

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

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MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
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MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
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MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>JOHN R.E. KENRICK,</u> <u>M. MELVIN CRYSTAL</u> , Resumed	7734
Cross-Examination by Mr. Colborne	7735

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
217	Original copy of magazine entitled: Canadian Geographic.	7746
218	Document entitled: Guide to Eating Ontario's Sport Fish, published by the Ministry of the Environment, 1988.	7770
219	Photocopy of Government of Ontario document.	7882

1 ---Upon commencing at 1:00 p.m.

2 THE CHAIRMAN: Thank you, ladies and
3 gentlemen. Please be seated.

4 Ladies and gentlemen, before we commence
5 today's session there is a couple of announcements.
6 Mr. Mander is occupied with some Board business in
7 connection with another hearing for this week and Ms.
8 Valerie Sonstenes from the Board's offices is replacing
9 him for the remainder of this week.

10 So she is available in the EAB hearing
11 room and the public viewing room will be open at the
12 usual hours at the end of the day for the rest of this
13 week as well. If you have any inquiries concerning any
14 matters before the Board, please contact Ms. Sonstenes
15 and she will liaise with us in connection with those
16 matters.

17 The second matter I want to deal with at
18 this time is the procedure that we have decided to
19 adopt with respect to the issuance of the Board's
20 ruling in connection with the motions brought before
21 the Board and which were argued last week.

22 The Board is proposing to provide a draft
23 copy of the ruling and the reasons for the ruling to
24 the parties late tomorrow evening. We have been
25 working on it for a few days now and it is fairly

1 lengthy in terms of the reasons and so what we are
2 proposing is to provide you with copies and we will
3 make some arrangements of how you can receive these
4 some time late tomorrow evening and, if you would
5 review them overnight and be prepared on Friday to
6 speak to the Board, if necessary, only on matters of
7 clarification.

8 We do not intend to have the issues
9 re-argued in any way, but because the ruling is fairly
10 comprehensive in its nature and deals with several
11 issues, we feel it would be to the parties' and the
12 Board's advantage to have a draft vetted by the parties
13 in terms of ascertaining whether or not any
14 clarification is required.

15 Once we have dealt with that on Friday we
16 will be in a position to issue the final ruling in its
17 final form which we will do Monday through the Board's
18 offices. Notwithstanding that we are not sitting next
19 week, we will arrange to have it issued and I will be
20 instructing the court reporters to read the final
21 version into the record. We do not intend, when we
22 introduce it tomorrow or even on Friday, to read it
23 into the record because it would take up some time and
24 that can be done by the court reporters so it appears
25 in the transcript verbatim so parties who are not

1 present at the hearing will have the opportunity of
2 reading it in full and the Board will arrange for its
3 distribution to the parties on the parties list.

4 Very well. I think we are now ready to
5 continue with today's session, unless there are any
6 preliminary matters to be dealt with at this time.

7 Mr. Freidin?

8 (no response)

9 Gentlemen, I think we can continue with
10 Panel 6.

11 Oh sorry, Mr. Colborne, I didn't see you.
12 I believe the order was that we had established last
13 week is that you would lead off.

14 MR. COLBORNE: I was just about to rise,
15 Mr. Chairman, and say that that was my understanding
16 and I was prepared to proceed now.

17 THE CHAIRMAN: Very well. And following
18 you, Mr. Colborne, I think we are going to hear from
19 Mr. Reid.

20 MR. REILLY: Reilly.

21 THE CHAIRMAN: Oh, sorry, Mr. Reilly. I
22 am sorry. And following Mr. Reilly, I guess Mr.
23 Castrilli would come at that point in time and then the
24 last party to be dealt with would be you, Mr. Campbell.

25 Is that correct?

1 MR. CAMPBELL: If there is still some
2 time left this week, I am prepared to start.

3 THE CHAIRMAN: And Mr. Hunter will be the
4 following week when we return on the 26th, I believe it
5 is.

6 MR. CAMPBELL: Yes. If I didn't get
7 reached this week, then I would just assume my normal
8 position.

9 THE CHAIRMAN: I think we should announce
10 early, Mr. Freidin, as well, just before we continue
11 with you Mr. Colborne, that we are going to try very
12 hard to finish up with this panel so that the Board
13 would be in a position to be in Toronto on September
14 30th.

15 The reason for that again, unfortunately,
16 is a Board meeting that has been scheduled for that
17 date to deal with a matter of some urgency and we would
18 be prepared to adjust the hearing hours so that we
19 could accomplish the completion of this panel before we
20 rise for October. I know we talked at one point, Mr.
21 Freidin, of perhaps sitting on Friday, but I think we
22 are going to plan at this stage not to.

23 Very well, Mr. Colborne.

24 JOHN R.E. KENRICK,
25 M. MELVIN CRYSTAL, Resumed

1 MR. COLBORNE: Mr. Chairman, I wish to
2 begin by directing questions to Mr. Kenrick and there
3 may be some overlap and so, therefore, I would have no
4 problem if Mr. Crystal wants to assist Mr. Kenrick.

5 But I will say now that my initial
6 questions are directed to Mr. Kenrick and I will advise
7 you, Mr. Chairman, when I am switching to Mr. Crystal
8 and, of course, I will advise Mr. Crystal at that time
9 as well.

10 CROSS-EXAMINATION BY MR. COLBORNE:

11 Q. Mr. Kenrick, I want to start by
12 asking you a few questions about your Curriculum Vitae
13 as filed. And I first notice that although you have
14 been involved in planning and it appears to me working
15 primarily as a professional planner, as well as your
16 other duties as administrator and so on for many many
17 years, but am I correct that you have no normal
18 training in planning?

19 MR. KENRICK: A. I have a General Arts
20 Degree from the University of Toronto. That's true,
21 it's not a planning degree.

22 Q. Yes. And no courses in planning as
23 such, or at least by that name?

24 A. I have had supplementary training, if
25 you will. I think they are listed, some of the courses

1 on things like public consultation skills. I would
2 interpret that as being part of planner's training I
3 think. Generally you are correct.

4 Q. And am I correct, sir, that you are
5 not a member of any professional association of
6 planners?

7 A. That's correct.

8 Q. And you are not certified as a
9 planner by any such association?

10 A. That's correct.

11 Q. Is it common within the Ministry of
12 Natural Resources for senior officials to act as
13 planners but without either planning qualification in a
14 formal educational sense, or without membership in
15 general planning professional organizations or
16 fraternities?

17 A. The planners that I am aware of come
18 from a host of backgrounds and some of them have taken
19 specific degrees in planning at Waterloo or some place
20 like that. Others are foresters, others are
21 biologists, some are more general. I happen to fall
22 into that category.

23 Q. At the second page of the filed
24 written materials and that is also the second page of
25 your Curriculum Vitae in short form, at the end of the

1 full paragraph at the top of that page I have noted
2 something and I want to ask you if it is just a
3 typographical error.

4 The paragraph that I have referred to is
5 taken up mainly by a list of various courses that you
6 have taken, each one separated by a comma. At the end
7 it says: Native awareness, but there is no comma and
8 negotiating skills.

9 Is that supposed to be native awareness
10 comma and negotiating skills, or is that supposed to be
11 as it appears, native awareness and negotiating skills?

12 A. They were two separate courses.

13 Q. So that is a typographical error?

14 A. That's correct.

15 Q. I am glad you said that.

16 Now, if you could turn to page 12, this
17 is in the longer form of your Curriculum Vitae, at the
18 end of the second paragraph on that page it says that
19 your experience in the Moosonee area:

20 "...enhanced your appreciation for the
21 issues of concern for native people in
22 the province...", et cetera.

23 Now, what I would like you to do is tell
24 me briefly what was your appreciation before and what
25 was your appreciation after; in other words, expand on

1 what the word enhanced means?

2 A. First of all, I guess to put it in
3 perspective, while I was in Moosonee the planning group
4 there almost exclusively is the native people. Of the
5 5,000 people that reside in that district 4,000 and
6 some odd would be native people.

7 I had worked with native people before on
8 different crews and projects while I was either in
9 Temagami or in Kirkland Lake, but I guess what I
10 learned most out of the Moosonee experience is a much
11 better understanding of some of that bonding between
12 native people and the resource base.

13 Q. So you had less appreciation of that
14 before being at Moosonee?

15 A. I am sure I would agree with your
16 word appreciation. I had a better understanding of it.

17 Q. It is your word appreciation, or did
18 you write this longer form of your Curriculum Vitae?

19 A. I worked on it. In hindsight, I
20 think I would use the word understanding.

21 Q. You worked on it. I am a little
22 curious? Was this written by public relations people?

23 A. I wrote it. No, I wrote it.

24 Q. Oh, you didn't work on it but you
25 wrote it?

1 A. Yes.

2 Q. I would like to go back to the
3 question of a few moments ago. Was your appreciation -
4 or I think you prefer understanding, is that the word
5 you prefer - was it less before being at Moosonee; is
6 that how I should understand your evidence?

7 A. I think my understanding of some of
8 the native values was less before I went to Moosonee.

9 Q. And would you be typical of a senior
10 Ministry of Natural Resources employee who had not been
11 to Moosonee or had not been to a place similar to
12 Moosonee in that respect?

13 A. Of my counterparts, district
14 managers, I know of a good number of them who have
15 gained that kind of understanding or appreciation in
16 other locations.

17 Q. I would like you to look a little
18 further down that page, again page 12 of the materials,
19 to the beginning of the fourth paragraph and here it is
20 said that one of the things that you did perhaps in
21 various positions, but certainly as district manager at
22 Moosonee, had to do with selection, training,
23 supervision, development and motivation of competent
24 staff and so on and so forth.

25 I don't like to, but I suggest to you

1 that it is possible to take an implication from that
2 that native employees are assumed to have dubious
3 competence, are not up to Ministry standards and so on?

4 A. I think you are interpreting it
5 wrong.

6 Q. Okay. Perhaps we will return to that
7 point in a few minutes. You also say in the same
8 passage that I just referred you to that the district
9 managers initiate a performance appraisal process, that
10 is one of their duties?

11 A. That's correct.

12 Q. And is that true across the province?

13 A. That's correct.

14 Q. Tell me, is there any internal appeal
15 process if the district manager appraises in a certain
16 way and the employee feels wronged or not dealt with
17 fairly?

18 A. It hasn't happened to me. Generally
19 what I do is I sign it when we are finished with the
20 discussions. You have to view it as somewhat like a
21 contracting process. We sit down and talk about
22 objectives, if you will, in terms of manager of that
23 office, I would like to see accomplished that year and
24 both the employee and myself sign it.

25 Q. Yes, but outside of government, that

1 type of contracting process is usually referred to
2 under the general title master and servant law and not
3 totally contract, and I am trying to get at and
4 wondering if we have here an example of decentralized
5 MNR power, in other words, locating the power of
6 assessing and evaluating employees in a district
7 manager but without protection for that weaker party,
8 the low level person who is trying to do well within
9 the Ministry and maybe isn't impressing his district
10 manager.

11 What I am trying to get at is: Is this
12 so decentralized and is there so much power in the
13 hands of district managers that there is no appeal
14 process or anything, there is no general right of low
15 level, perhaps especially entry level Ministry of
16 Natural Resources employees, to have any recourse if
17 their district manager says: I don't like the way you
18 part your hair?

19 A. I don't think a district manager in
20 our organization would do that anyway. If we were
21 dealing with a performance appraisal of an individual,
22 I think there is a line that has to be drawn there
23 between a standard annual performance appraisal and
24 something that I would consider to be sort of
25 disciplinary in nature.

1 And if it gets into that area then I
2 believe there is a whole host of protection through the
3 collective agreement that protects the employee.

4 Q. Okay. But as far as you know the
5 collective agreement doesn't have to do with just
6 performance appraisal, it has only to do with
7 discipline, discharge that type of thing; is that
8 right?

9 A. Correct.

10 MR. MARTEL: Can I ask a question. Is
11 there protection for the seasonal employee under the
12 collective agreement though, the part-time employee by
13 contract?

14 MR. KENRICK: I am not sure of the answer
15 to that. In light of this question I know we do
16 performance appraisals with seasonal staff in I believe
17 some categories. The term seasonal has a couple of
18 different meanings. I know that some seasonal staff I
19 think are represented by the collective agreement and
20 the Union, but I couldn't give you a definite answer in
21 that.

22 MR. COLBORNE: Q. I am turning now to
23 page 14 of the same material, sir. Towards the end of
24 the text on that page, it would be the second last
25 sentence, there is reference to a native awareness

1 program which you were engaged in?

2 MR. KENRICK: A. That's correct.

3 Q. How long was that course?

4 A. Three days I believe.

5 Q. Now, sir, when your background had
6 been canvassed by Mr. Freidin he asked that you be
7 qualified as an expert in the collection and use of
8 resource data. You remember that no doubt?

9 A. Mm-hmm.

10 Q. I would like to start with a fairly
11 simple question about resource data. What is the
12 highest point in Ontario?

13 A. A mountain that I know is Ishpatina
14 which is in the middle of the Lady Evelyn Wild River
15 Park. In fact a cohort and I named it, it is higher
16 than the mountain...

17 THE CHAIRMAN: Do you mind spelling the
18 name of that mountain, if you can.

19 MR. KENRICK: I believe it is
20 I-s-h-p-a-t-i-n-a. Again, I would have to check that.

21 MR. COLBORNE: Q. And is it correct that
22 your Ministry determined that that was the highest
23 point in Ontario only in 1972?

24 MR. KENRICK: A. That would be about the
25 right time, yes.

1 Q. And from the 60s through to '72 you
2 thought it was Ogidaki Mountain near Sault Ste. Marie?

3 A. I don't recall. I remember when it
4 was determined this was higher than whatever the
5 mountain was that was considered previously.

6 THE CHAIRMAN: Mr. Colborne, what is the
7 exact relevance of the height of two different
8 mountains?

9 MR. COLBORNE: Well, Mr. Chairman, we
10 have here witnesses who purport to have an enormous
11 amount of information about the natural environment in
12 Ontario. I represent people who claim to have less
13 information than these people do, but I suggest that a
14 Ministry that comes forward and for over 100 years
15 after Confederation kept getting wrong the location of
16 the highest point within its jurisdiction ought to be
17 treated with a little bit of doubt as to the exactness
18 and precision and totality of its data.

19 THE CHAIRMAN: But is the purpose to
20 determine who has the most amount of information or the
21 best information? And is it a contest between the two
22 groups, whether the natives have better information or
23 the Ministry has better information?

24 MR. COLBORNE: No, quite frankly I am
25 challenging the credibility of the proponent. I think

1 that the proponent pretends to have vast amounts of
2 information whereas in fact its information is very
3 dubious, not scientifically based, but unfortunately
4 not criticized either because they are a power onto
5 themselves.

6 And I wanted to illustrate with this
7 initial point and, if I may, Your honour, I would like
8 to ask one more question.

9 Q. Sir, is it not true that from 1960s
10 and on -- backwards through history your Ministry or
11 its predecessor thought that it was yet another
12 location called Tiptop Hill?

13 MR. KENRICK: A. I don't know.

14 Q. Do you know a magazine called
15 Canadian Geographic and is this a reputable magazine?

16 A. I subscribe to it, I enjoy it.

17 Q. Have you read the current edition?

18 A. No, I haven't.

19 Q. May I commend you to an article on
20 page 88 which tells us that it was not known what the
21 highest point in Ontario was until quite recently and
22 that previously two completely different locations had
23 been thought to be the highest point.

24 Mr. Chairman, we have had everything
25 including a phone book filed. I would like to file a

1 copy of this.

2 THE CHAIRMAN: Well, I am not sure
3 whether the Board has read the magazine either, but we
4 will certainly admit it. Exhibit 217.

5 ---EXHIBIT NO. 217: Original copy of magazine
6 entitled: Canadian Geographic.

7 MRS. KOVEN: Can I have two copies, Mr.
8 Colborne, please.

9 MR. COLBORNE: (handed)

10 MRS. KOVEN: Thank you.

11 THE CHAIRMAN: You are taking back the
12 magazine, you are not giving us the magazine?

13 MR. COLBORNE: Mr. Chairman, I left the
14 magazine where Mr. Mander usually sits. As the
15 original, it can be filed.

16 THE CHAIRMAN: Thank you.

17 MR. COLBORNE: And what I have
18 distributed is simply the page of the magazine that
19 contains the mast head and the page that contains the
20 item that I have referred to.

21 THE CHAIRMAN: Thank you.

22 MR. COLBORNE: And I have extra copies of
23 it.

24 MR. TUER: Can I have a copy, please.

25 MR. COLBORNE: Q. Now, Mr. Kenrick, I am

1 representing a status Indian organization, so I want to
2 go directly to that section of your paper which deals
3 with local and traditional users. So this will put me
4 out of order just a wee bit, but if you don't mind I
5 would like to go forward to 138 -- page 138 of the
6 materials.

7 A paragraph appears on that page which
8 begins with a statement that appears in many MNR
9 documents, perhaps in slightly different wording from
10 time to time. The statement being that:

11 "The province is committed to the
12 principle that its resources belong to
13 all the people of Ontario and will be
14 administered in the best interest of the
15 total population of Ontario."

16 Do you agree, sir, that that statement or
17 something very similar to it is something that is very
18 frequent in Ministry publications?

19 MR. KENRICK: A. I agree.

20 Q. Do you also agree that quite often a
21 rider or a qualifier is then added to it. Just as you
22 have here:

23 "Including the special interests of the
24 residents in the location of resource."

25 A. Usually if it is an explanation of

1 local and traditional users, the text is somewhat the
2 same.

3 Q. Right. Well, let's just turn quickly
4 to page 176 of the material. This is Mr. Crystal
5 speaking now, or at least his paper. That would be
6 page 176 at the bottom.

7 And, sir, you have already said that it
8 is very common to see this language in Ministry
9 publications, so I am not faulting or questioning that
10 Mr. Crystal should be saying something the same thing
11 as you, he obviously should be, it makes a lot of sense
12 to me.

13 But I want to direct your attention to
14 the fact that he has tagged on a qualifier too. Your
15 qualifier had to do with local and traditional users,
16 his qualifier had to do with:

17 "MNR recognizes obligations under Indian
18 treaties and in allocating such resources
19 gives primary consideration to
20 subsistence use by native people."

21 I show that to you, sir, as an
22 illustration of the point that I was asking you about
23 in the sense of is it correct, that quite often you
24 have the general proposition stated and then you have a
25 rider.

1 Would you agree with me that that is
2 something you often find in Ministry publications?

3 A. Not universally, but particular
4 statement on local and traditional users is worded
5 somewhat the same wherever you find it, that's true.

6 Q. The one that you use appears in
7 virtually every District Land Use Guideline for the
8 north; is that not correct?

9 A. That's true.

10 Q. Yes. The one that Mr. Crystal uses
11 is found less commonly in publications; would you not
12 agree?

13 A. Perhaps you should ask Mr. Crystal.

14 Q. No, no, you are familiar with the
15 publications of the Ministry, I hope.

16 A. Less common, yes.

17 Q. Now, my question to you is: What
18 does the first part of that mean to you, "belongs to
19 all the people of Ontario"?

20 A. I understand it to mean that it
21 belongs to all of the people as opposed to belonging to
22 one particular group.

23 Q. Would that also include, as opposed
24 to belonging to a single private owner -- let me give
25 you an example just so my question can be clear.

1 If I own an acre of bush surrounded by
2 Crown land, what I do with that acre of bush is pretty
3 well my business; right, if I own it?

4 A. Within some limits and the Planning
5 Act, I understand, can have some effects on what you do
6 with your private acre of bush.

7 Q. Oh yes, there is that type of effect,
8 but in terms of what your Ministry does in relation to
9 forest, if you have private owners and a forest land
10 and they don't care to take advantage of any of the
11 services or advices or whatever that your Ministry
12 gives with respect to forest, they don't have to
13 participate; do they?

14 A. That would be my understanding.

15 Q. Because their land doesn't belong to
16 all the people of Ontario, it belongs to them; is that
17 your understanding?

18 A. I find it just a little dangerous to
19 make it that general a statement. There may be
20 reservations that apply to classes of trees that are on
21 it, if you are talking about a timber resource.

22 Q. Okay.

23 A. Again, I would qualify it a little,
24 but generally yes.

25 Q. Okay. But when I asked you to state

1 your understanding of it, you weren't excluding private
2 owners who had fee simple title, what you were
3 excluding was groups of people.

4 Who are these groups of people?

5 A. I am not sure -- I didn't mean --
6 what I did mean was it's owned collectively as opposed
7 to by a group or an individual, if you will.

8 Q. Oh, you didn't mean that this is just
9 a catch phrase that's put in to make sure that nobody
10 has any doubt that MNR is the owner and nobody else,
11 certainly not Indians have any ownership interest?

12 A. My understanding is they are Crown
13 resources.

14 Q. Right.

15 THE CHAIRMAN: How far, Mr. Colborne, are
16 we planning to go along the lines of the ownership-type
17 questions?

18 MR. COLBORNE: You will have to stop me,
19 Mr. Chairman, because my clients say that they have a
20 ownership interest and that Mr. Crystal's very brief
21 outline of the law was frankly wrong and misleading and
22 that's what we are here for.

23 And that's what we're here for and I
24 haven't said we are not here for that right from the
25 beginning.

1 THE CHAIRMAN: Well, I suppose we have to
2 embark upon this discussion at some point in this
3 hearing, so we might as well embark upon it in the
4 sense that: Is it your view that the mandate of this
5 Board includes any type of statements as part of the
6 Board's decision related to ownership questions of what
7 purports to be, at least in terms of the proponent's
8 position, to be Crown lands?

9 In other words, as you are quite aware,
10 and I am sure we are all aware, many of these questions
11 are before the courts at various levels.

12 MR. COLBORNE: Well, Mr. Crystal said
13 that. I think very few of them are before the courts.

14 THE CHAIRMAN: Well, even if very few of
15 them are before the courts, the whole ownership
16 question is one that involves a variety of both
17 government agencies, statutes, possibly the Charter and
18 the Constitution and the question arises, I think
19 fairly, as to what is the position of this Board in
20 terms of its obligations to entertain the application
21 before it and arrive at a decision on that application.

22 And, I mean, we could be spending months,
23 if not years, just debating the ownership questions as
24 it applies to aboriginal and native peoples versus the
25 Crown.

1 MR. COLBORNE: I appreciate your concern,
2 Mr. Chairman. I think I said once earlier when this
3 question arose that the courts typically have run away
4 from it. I hope that in my cross-examination I will
5 bring out that the Crown, as a representative entity,
6 has run away from it and I suggest that I have rarely
7 seen a mandate broader than yours and although I will
8 not, in the end, be asking you to make any legal
9 decisions or apply any legal principles which you would
10 develop in regard to ownership, I expect in the end to
11 have affirmed instructions to ask you to require the
12 proponent that they seriously and bona fide attempt to
13 settle these issues if they intend to continue to have
14 the authority or permission of your Board, if they
15 continue carrying out these activities.

16 THE CHAIRMAN: Well, suggesting to the
17 Board that we require the Ministry at some stage to
18 seriously entertain settlement negotiations or
19 settlement of these ownership questions is one thing as
20 opposed to the Board going any further, and it may have
21 an impact on the course of your cross-examination as
22 well as the course of your evidence that you adduce at
23 a future time as well as that of Mr. Hunter on behalf
24 of his clients.

25 And I guess what I am saying is, is that

1 we I think have to delineate what the bounds of this
2 question are perhaps before we get into a lengthy
3 cross-examination wherein you try to establish, either
4 through cross-examination or direct evidence aspects of
5 ownership on behalf of your clients.

6 I mean, if we are going to rightfully
7 entertain that kind of question as a part of this
8 proceeding, well then it may be quite proper for you to
9 do so if it is not going beyond our asking at the end
10 the Ministry get on with the business of trying to
11 settle these things, either this Ministry or the Native
12 Affairs Directorate or some other body of government,
13 then I think we should know that now.

14 Do you not agree that we should perhaps
15 decide where we are going on this question at the
16 outset of, I would suggest, your cross-examination
17 because it will impinge on others' cross-examination
18 and the evidence that they will adduce ultimately?

19 MR. COLBORNE: Yes. Well, Mr. Chairman,
20 my position isn't that complex. It is based on Section
21 109 of the British North America Act which I am sure
22 Mr. Freidin will agree is the basis on which he comes
23 in here and says that his clients own the forest.

24 I say that my clients have an interest
25 other than the province and not only I say that, every

1 level of court, without any debate, has said that. The
2 people who don't agree with it are the people who are
3 before you saying we own the forests. And so it is not
4 a matter where...

5 THE CHAIRMAN: Now, we are talking about
6 the Crown forest; are we?

7 MR. COLBORNE: Yes. We own the Crown
8 forest, they are saying. We are saying -- my clients
9 are saying: No, you don't. You own the Crown forest
10 subject to interests other than the province and we are
11 interests other than the province, and that is what the
12 courts have always said. And so we have an ownership
13 interest here and it is not that complicated. We don't
14 need to sit for months to establish that. It is just
15 that the proponent happens to be, I would suggest - but
16 I am not ready to argue yet - but just absolutely
17 willingly blind and it simply lacks bona fides in
18 refusing to admit that and, therefore, is causing
19 incredible unfairness, economic problems, social
20 problems all of the things that are within environment
21 under the Act to my clients.

22 And if this Board can't address that, who
23 can, who will? Now, that is different from me asking
24 you to read all of the Victorian era cases that Mr.
25 Crystal bases his position on and re-think them in

1 1988. I am not going to ask you to do that, not at
2 all.

3 THE CHAIRMAN: And I take it you are not
4 asking the Board to make any kind of finding as to
5 ownership?

6 MR. COLBORNE: No.

7 THE CHAIRMAN: Or are you?

8 MR. COLBORNE: I will ask you to express
9 doubt and, therefore, require bona fide negotiations.

10 THE CHAIRMAN: Is that not a form of
11 finding?

12 MR. COLBORNE: I don't believe so.

13 THE CHAIRMAN: Well, is that not a form
14 of rejecting possibly an opposing party such as the
15 Ministry's claim?

16 MR. COLBORNE: It may be. Once you have
17 heard all the evidence, you may feel compelled to
18 express doubt.

19 THE CHAIRMAN: Well, I think I would
20 like, just before we go on Mr. Colborne, just to
21 canvass other counsel briefly as to where they feel the
22 Board should be going in connection with this question
23 at this time, without obviously getting into a full
24 argument because I do not think the parties have been
25 properly advised with advance notice as to this

1 - particular question.

2 But I think we are embarking upon a
3 serious issue that requires clarification up front
4 which will establish some of the ground rules for the
5 remainder of this hearing, particularly dealing with
6 the native and aboriginal populations.

7 Mr. Freidin?

8 MR. FREIDIN: Mr. Chairman, I would ask
9 that I go last.

10 THE CHAIRMAN: You would like to go last.
11 Would anyone like to go first?

12 Mr. Tuer?

13 MR. TUER: I am not prepared to argue the
14 matter at this point.

15 THE CHAIRMAN: No, I fully understand
16 that

17 MR. TUER: The position is that is not
18 within the jurisdiction of this Board to deal with
19 ownership questions and that the questions that Mr.
20 Colborne raised are questions of ownership and it is
21 outside the perview of this hearing and investigation
22 by this Board.

23 THE CHAIRMAN: Mr. Campbell, do you have
24 a very preliminary opinion about what we are
25 discussing.

1 MR. CAMPBELL: Well my sense of what I
2 have heard so far, Mr. Chairman, is simply this: That
3 the matter of ownership and the definition of treaty
4 rights is simply not one on which this Board can make
5 any useful ruling either now or at the conclusion of
6 this hearing.

7 Even if the Board came to some particular
8 conclusion, Mr. Colborne has clearly described this - I
9 think it is fair to note - that if these questions are
10 going to be litigated they are going to be settled by
11 litigation, not by boards but by courts, and there is a
12 difference.

13 THE CHAIRMAN: You see the problem --
14 just to follow on on that point, the problem arises,
15 Mr. Colborne, to some extent that should we decide, for
16 instance, that we have a basis upon which to make or
17 entertain aspects of the ownership question and base
18 other parts of our decision on that relating to this
19 hearing, there is little doubt in this Board's mind
20 that the courts would ultimately review that decision.
21 And the basis of the whole Board's decision might hinge
22 on the view that the courts take with respect to those
23 questions.

24 I mean, that is the danger. We could be
25 going through a two-year exercise and come out at the

1 end of the day and base part of our decision on some
2 findings in that area, subsequently reviewed by the
3 courts, and I have little doubt that on this type of
4 question it may get well up -- all the way up to the
5 Supreme Court of Canada, they may take the contrary
6 view, which might throw in doubt the whole basis of the
7 Board's decision dealing with the timber management
8 question in general.

9 And that is a clear danger, at least from
10 the Board's perspective.

11 MR. CAMPBELL: Clearly that's correct,
12 Mr. Chairman. And if I could just say, in terms of the
13 types of matters that the Board does have to think
14 about as opposed to the types that it doesn't, to the
15 extent that Mr. Colborne is expressing the concerns of
16 his clients with relation to the kinds of impacts that
17 he has described social, economic all of those other
18 matters that impact directly upon his client, then
19 clearly insofar as timber management, in Mr. Colborne's
20 client's view results in those impacts, then those
21 impacts are properly before the Board and it is
22 necessary for the Board to look at those. I think
23 there is not a counsel here who would disagree with
24 that proposition.

25 The only area that I think that might

1 have some concern for the Board is the relationship
2 that was mentioned in Mr. Crystal's evidence between
3 the forest management agreements and the resolution of
4 native claims; that is, is there anything contractually
5 being done by the proponent which might or might not
6 impinge upon claims being made by Mr. Colborne's
7 clients or by other Indian or native groups.

8 I don't know whether it was in Mr.
9 Crystal's evidence-in-chief or whether it was in
10 cross-examination, perhaps it was in cross-examination
11 that it was touched on. That is the kind of area where
12 there might be some link between the undertaking per se
13 and the question of native claims on the other hand.

14 I though take the position on that, that
15 that is not a question that requires the resolution of
16 native claims, it just requires a clear understanding
17 of how those two things interact so you have some sense
18 of that when you make your decision.

19 And I probably talked far too long for a
20 matter on which obviously we have not had a lot of time
21 to do a lot of thinking.

22 THE CHAIRMAN: Thank you.

23 Mr. Reilly?

24 MR. REILLY: Mr. Chairman, we would
25 support the position taken by Mr. Colborne. Our

1 position is that the Ministry in putting forward its
2 evidence is recognizing and dealing with status Indians
3 on reservations. There is a difference in my mind in
4 an interest in land and an interest in usage, for
5 instance.

6 We represent what we claim to be about a
7 100,000 native people within this region and if this
8 Board adopts the position put forward by the province,
9 then it is making a finding in fact contrary to the
10 interests of the Metis and non-status Indians within
11 northern Ontario. It must deal with the question and
12 if the usage of the lands is taken away from the people
13 whom we represent, well then I would suggest to you,
14 sir, that the Board is in fact making a finding on
15 their rights and it is a contrary finding and the
16 danger is...

17 THE CHAIRMAN: Well, why would the Board
18 make a finding that the usage is being taken away.

19 MR. REILLY: Well, if the usage goes to
20 someone else and my people have an interest in the
21 lands and in the timber, which we say we do, then the
22 Board's finding is contrary to our position and our
23 position may be correct in law.

24 THE CHAIRMAN: Just to understand what
25 you are saying is, is it on Crown lands if we should

1 find that the Ministry has a right to manage those
2 resources - suppose this is not an area under an FMA
3 but on actual Crown lands - your position would be that
4 if in law your clients own that land, then the Ministry
5 doesn't have the right to that usage; is that correct?

6 MR. REILLY: That is correct, it goes one
7 step back.

8 THE CHAIRMAN: And the only way we could
9 determine that would be to determine who owns the land.

10 MR. REILLY: That's right and if you make
11 a determination one way, it is going to be adverse to
12 our peoples' interest and it is not necessarily
13 ownership, it may be usage too of the lands, the same
14 as any treaty Indian has special rights different from
15 other residents of northern Ontario. The Metis claim
16 to have a share in those special rights and your
17 decision -- the Board's decision may well affect those
18 rights.

19 THE CHAIRMAN: Thank you.

20 Mr. Williams, do you have anything to say
21 on this?

22 MR. WILLIAMS: Mr. Chairman, I would only
23 think back to the early stages of these hearings when
24 the Board endeavored to establish the framework and the
25 terms of reference within which you were to make a

1 decision on the environmental matters related to the
2 undertaking at hand.

3 And I think there was some difficulty
4 that all counsel were having, let alone the Board, in
5 trying to focus in on the issues that you felt were
6 relevant to this very broadly based Class EA and at
7 that time I think in getting into the debate over the
8 timber management versus forest management, you
9 endeavored I think quite successfully to clarify that
10 issue for us as to how far afield your Board felt
11 counsel and others could go in dealing with the
12 non-timber issues and determine largely on whether or
13 not they related either directly or indirectly to the
14 main issue at hand which was dealing with the
15 appropriate timber management process in Ontario.

16 And during the course of that discussion
17 and your endeavor to set down those guidelines, I don't
18 recall that the matter of ownership was part of the
19 mandate as you saw it at that time, nor was it an issue
20 with other counsel at that time as I recall, which
21 seems to me that certainly the use of the land is
22 clearly an issue and the right of the different users
23 dealing with many facets of the undertaking,
24 particularly bearing in mind the multiple use approach
25 as taken by the proponent.

1 But, again, at no time in my recollection
2 did the matter of the actual ownership of lands become
3 part of the issue at hand, nor was it suggested by
4 yourself.

5 It seems to me that that particular
6 issue, Mr. Chairman, is outside the perview of the
7 hearings and you would be usurping the responsibilities
8 and duties of the courts to deal with the issue in a
9 judicious fashion and I think that the Board perhaps
10 would be going beyond its mandate in getting itself and
11 the rest of us into a quagmire in trying to deal with
12 that issue.

13 And with the greatest of respect for the
14 importance of the issue, it just seems to me that it
15 indeed stems beyond the scope of these hearings and
16 would not be within your area of jurisdiction or
17 responsibility of the undertaking.

18 THE CHAIRMAN: Thank you.

19 Mr. Freidin?

20 MR. FREIDIN: Well, Mr. Chairman, I can
21 be quite brief. I think the position of the proponent
22 was set out in the evidence of Mr. Crystal and as well
23 during my opening remarks.

24 If I could -- I am not going to take the
25 time to go through those again, but it is the

1 proponent's submission that Mr. Reilly's position is
2 incorrect, that the Board need not -- as I understand
3 Mr. Reilly he is saying: Well, the Board can make a
4 finding quite dependent -- pardon me, you can make a
5 finding, you can make a finding on certain rights
6 because Mr. Crystal's given certain evidence.

7 And my submission is that the Board in
8 dealing with these specific timber management
9 activities and determining under what conditions they
10 should occur and how they might be modified, you can
11 make that decision quite independent of deciding on the
12 issue which has been raised by Mr. Colborne.

13 THE CHAIRMAN: But the question relates
14 to how much evidence the Board is going to entertain
15 with respect to ownership questions. That is the
16 dilemma we are in right now.

17 MR. FREIDIN: I am not too sure whether
18 in fact, if the Board is going to hear evidence, it
19 should be hearing evidence necessarily on
20 cross-examination. I mean if my friend or if the
21 client of my friend has certain attachments to the
22 land, certain views or relationship to resources as a
23 result of their understanding or because of rights or
24 because of their history, I think they can call that
25 evidence, they can put those people before you and, as

1 I indicated before, you can have some regard to their
2 views, their relationship to the land in determining
3 whether in fact certain terms and conditions should or
4 should not be applied.

5 But I think that can be done independent
6 of the determination one way or the other as to whether
7 there are legal rights which attach to those feelings
8 or whether there is legal obligations on somebody in
9 order to deal with a certain matter as a legal thing as
10 opposed to a social or an environmental value which
11 should be accommodated in some fashion.

12 In my submission it is not necessary for
13 the Board to get into it. No. 2, it is the position of
14 the proponent that this is really not an appropriate
15 forum to deal with that and that position is supported
16 by the Ontario Native Affairs Directorate.

17 And I think that would be all I have to
18 say.

19 THE CHAIRMAN: And what is the position
20 of the Ministry with respect to entertaining some of
21 these issues in terms of cross-examination?

22 MR. FREIDIN: In terms of -- it is hard
23 to draw the line. I mean, I don't know when to say it
24 is has gone too far, but what I am saying is it is
25 something that perhaps is more appropriate to be dealt

1 with, based on the way I see the issue, to be dealt
2 with in evidence-in-chief by my friend's client
3 indicating to the Board their concerns and how timber
4 management activities potentially affect them or do
5 affect them.

6 But I can't tell you where to draw the
7 line on the cross-examination.

8 THE CHAIRMAN: Mr. Colborne?

9 MR. COLBORNE: In reply to the concerns
10 that you yourself expressed, Mr. Chairman, about any
11 decision of this Board being reviewed by the courts -
12 these are certainly not your words - but if you got off
13 on a tangent about ownership, I can agree with that,
14 but I want to stress that I am not going to be inviting
15 you to do that.

16 But I would like to suggest that that
17 particular coin can come up on the other side. I am a
18 little distressed that several months after this
19 hearing started and after a great deal of comment in
20 the corridors about how long it is taking to get any
21 evidence in and the number of weeks and so on that are
22 passing, that within ten minutes of Indian rights
23 coming up people are jumping all over me and suggesting
24 that I am going to have my cross-examination limited
25 and perhaps I will not be able to call the evidence

1 which my clients want me to call.

2 I suggest, Mr. Chairman, that that kind
3 of thing can also be reviewed by the courts and I want
4 to cross-examine and I want to call evidence, not
5 because from a legal point of view of my client's tell
6 me to, or from a legal point of view, as counsel, I
7 think it is the best thing to do.

8 I say I have the right to do that because
9 they opened the door, they put Mr. Crystal on the
10 stand, he announced that he was going to give a little
11 short course in Indian rights so that you people
12 wouldn't be misled and my suggestion is, with great
13 respect, Mr. Chairman, that as soon as that door was
14 opened I can walk through it and if I can't, I think
15 somebody else will let me.

16 THE CHAIRMAN: Well, before we talk about
17 going to other forums, which we are all aware is
18 perfectly open to any of the parties at any time during
19 these proceedings, I think the Board's intention in
20 raising this at this time, Mr. Colborne, was just to
21 try and get a handle, if I might put it that way, on
22 the scope of the cross-examination, what the
23 implications of embarking on this course of enquiry
24 might lead to.

25 It is simply that. It is not making a

1 definitive ruling at this point in time one way or the
2 other. It is just that some of your questions were
3 directed towards ownership and if your line of
4 questioning is going to continue along that line, then
5 I think we have to face up to the issue and come out
6 with some position on the part of the Board as to where
7 the line will be drawn, if at all.

8 MR. COLBORNE: Very well.

9 THE CHAIRMAN: So I suppose at this point
10 in time...

11 ---Discussion off the record.

12 THE CHAIRMAN: All right. At this stage,
13 Mr. Colborne, why don't we just proceed with your line
14 of questioning and we will see where it goes from here.

15 MR. COLBORNE: Thank you, Mr. Chairman.

16 Oddly enough I had just reached the end
17 of my questions on Mr. Kenrick's section on local and
18 traditional users. Now, I want to ask him questions
19 about other matters.

20 Excuse me for just a moment.

21 Q. Mr. Kenrick, you gave some evidence
22 and you included some written materials regarding
23 Ontario's fisheries resource and you described it
24 several times as being: "world class"; am I right?

25 MR. KENRICK: A. Correct.

1 Q. I would like to show you a document.
2 You recognize this no doubt? (handed)

3 A. I have seen it.

4 Q. Is that a publication of the Province
5 of Ontario?

6 A. I believe it is, yes.

7 Q. Ministry of the Environment?

8 A. Ministry of the Environment.

9 Q. 300 and some pages telling us what
10 fish we can eat and what we can't because it is
11 dangerous to eat?

12 A. Correct.

13 MR. COLBORNE: I would like to file that
14 as an exhibit, Mr. Chairman. The title is: Guide to
15 Eating Ontario's Sport Fish, published by the Ministry
16 of the Environment, 1988.

17 I will file the original. I am sure the
18 proponent could obtain many additional copies. I have
19 only photocopied the title page and the index and so
20 on.

21 THE CHAIRMAN: Very well. Exhibit 218.

22 ---EXHIBIT NO. 218: Document entitled: Guide to
23 Eating Ontario's Sport Fish,
24 published by the Ministry of the
Environment, 1988.

25 MR. COLBORNE: (handed)

1 MRS. KOVEN: Thank you.

2 THE CHAIRMAN: Thank you.

3 MR. COLBORNE: Q. Do you know of any
4 other jurisdiction where they have a 300 plus page book
5 dealing with polluted fish flesh?

6 MR. KENRICK: A. I am not aware. I
7 don't know the answer to that.

8 Q. Is the world class fishery resource
9 in Ontario threatened and in decline according to most
10 experts?

11 A. I don't believe so.

12 Q. Are you familiar with a book called:
13 Rising to the Challenge, a New Policy for Canada's
14 Fresh Water Fisheries by Dr. Pierce published in 1988
15 by the Canadian Wildlife Federation?

16 A. No, I am not.

17 Q. I will be returning to that.

18 You gave some evidence, sir, about the
19 population in northern Ontario and you mentioned that a
20 good part of it exists along the Highway 17 and 11
21 corridors; is that correct?

22 A. That's correct.

23 Q. Would you agree that that's because
24 northern Ontario performs in many ways a corridor
25 function in Canada between the more populated east and

1 the larger west; that one of the reasons why people
2 live in this part of the country is because they
3 perform services along the corridor between two other
4 parts of the country as opposed to living here because
5 there are economies that are located here that arise
6 out of local resources and so on?

7 A. I am not sure, as a general
8 statement, I would agree with that. If I think of
9 communities and the location of them across the north,
10 in many cases they are there because of the location of
11 a resource base and not because they are between two
12 other places.

13 Q. No, I am not saying all of the
14 population, sir, I am not asking you to agree with me
15 that all of the population in northern Ontario is
16 located here because it has a corridor function; I am
17 asking if some of it does and if this fact that most of
18 it is along the two highway corridors reflects that
19 fact?

20 A. I suppose some might for that reason.
21 It wouldn't be the driving force in my mind though.

22 Q. You are not prepared to agree with me
23 that a single soul lives in northern Ontario because
24 that person is employed, for instance, in a corridor
25 industry and that person would simply not be here if

1 there wasn't the corridor, not a single soul?

2 A. No, I don't believe I am saying that,
3 but you are asking for a generalization that I don't
4 think I can agree with.

5 Q. Let's talk for a minute about the
6 population of Indians referred to. Now, you gave a
7 fair bit of oral evidence and you filed a fair bit of
8 documentation on population of Indians primarily in
9 Ontario but you attempted in some respects to break it
10 down into the Indian or native -- excuse me, native
11 population in the north as well.

12 And your filed evidence contains figures
13 such as numbers 21, 22, a great deal of data, but
14 nowhere is a source given, nowhere is a footnote given
15 except to a consultant's report received by the Office
16 of the Ontario Native Affairs Directorate.

17 Is that consultant's report in fact the
18 source of all of your data concerning Indian
19 population, Indian employment, so on and so forth?

20 A. Yes, it is. I checked with the
21 Ontario Native Affairs Directorate as to whether there
22 was other or a better set of data that I might draw on
23 and I was advised that this was the best that they were
24 aware of.

25 Q. Right.

1 A. It wasn't an original study, it was
2 drawing upon things like Stats Canada information.

3 Q. Well, may I suggest to you, sir, that
4 your printed material is simply, in most cases, of
5 diagrams literally clipped out of that report?

6 A. That's correct.

7 Q. It is a just a cut-and-paste
8 operation?

9 A. That's correct.

10 Q. Except that you didn't cut out the
11 source references in the tables? Whoever used the
12 scissors in pasting this up, for some reason, cut out
13 the source line in each case.

14 And would you agree, sir, that the source
15 in each case was the Department of Indian Affairs?

16 A. As I recall, a special tabulation for
17 IFAC, that's correct.

18 Q. Right. Why would you do that? Were
19 you trying to leave the impression that you have this
20 data?

21 A. That was inadvertent. I felt it was
22 covered off. There was a reference as a footnote to
23 say all of the information that I had put in that
24 section came out of that document, Towards the
25 Framework for Native Economic Development Policies and

1 Programs in Ontario dated January 1987.

2 Q. Right. And every speck of population
3 data in there has its origin in the 1981 census, is
4 that correct, or at least --

5 A. I understand that, yes.

6 Q. Okay. And the reason why there is
7 nothing from the '86 census is that it is less reliable
8 for native people? I think those were your words.

9 A. I believe that, and that is also a
10 quote in the paper itself.

11 Q. Do you know why it is less reliable
12 for native people?

13 A. I believe there was less native
14 participation in the 1986 census than there was in the
15 1981 census.

16 Q. Would that include active refusal to
17 cooperate?

18 A. My understanding is it included some
19 of that.

20 Q. Sir, you again and again, I think at
21 least three or four times, say that the native
22 population is 1.3 per cent of the Ontario population,
23 and then you also give a similar statement on several
24 occasions with respect to the area of the undertaking,
25 native population is 3.5 per cent.

1 Are you quite confident of that figure?
2 And I don't ask that in any disrespectful way, I was
3 honestly wondering how you could do that without taking
4 all the census tracks literally, and an adding machine
5 and sitting for hours, and even so it will be 1981?

6 A. That's true, it is 1981. And I
7 believed what I had was a listing of native population
8 by territorial districts. So it is out inasmuch as the
9 territorial districts don't line up, or census tracks
10 and divisions don't line up exact with the boundaries
11 of the undertaking. That imperfection is in there.

12 Q. All right. And it would also be out
13 in the sense that native people are self-identified,
14 they are in the census; if they don't call
15 themselves -- if they don't identify themselves as
16 that, they are assumed to be not that; is that correct?

17 A. My data relies on the census
18 definition, yes, that's correct.

19 Q. Now, would you agree that in some
20 areas, even in 1981, the native population was very,
21 very, very much higher than the 3.5 per cent average
22 across the area of the undertaking?

23 Let me give you a couple of examples. My
24 clients mainly live in the Kenora and Fort Frances
25 districts. In the consultant's report which is your

1 sole source, you have already said, what does it say
2 about the Kenora district for 1981? What is the
3 percentage of native population in that district?

4 A. Offhand, I am not sure. The north
5 and northwest were grouped together in the 37,000
6 figure that's shown on Figure 20.

7 Q. I am showing you a document, sir,
8 entitled Towards a Framework for Native Economic
9 Development Policies and Programs in Ontario.

10 Is this the document that we have been
11 referring to as your sole source or almost your sole
12 source for your population and employment statistics?

13 A. I believe so, it looks familiar.

14 Q. And is it Appendix C to this
15 document, again, that is practically your sole source
16 for your employment and population statistics and so
17 on?

18 A. I believe so.

19 Q. If you could look at page 6 of that
20 Appendix C, would you tell me what the percentage in
21 1981 of self-identified natives were in the Kenora
22 district?

23 A. Is that the second number from the
24 bottom that you are referring to?

25 Q. That's the way I read it, maybe I

1 misunderstand it. It seems to be quite plain to my
2 reading.

3 A. Kenora district, 27.1 per cent.

4 Q. In 1981, of self-identified natives?

5 A. Yes, sir.

6 Q. Who responded to the census of that
7 year?

8 A. Yes, sir.

9 Q. What about Rainy River District?

10 A. 10.2 per cent.

11 Q. Is there at least one other district
12 which is even higher than the Kenora district?

13 A. Yes, there is.

14 Q. Which one would that be?

15 A. Manitoulin, 31.3 per cent.

16 Q. So although we on average have
17 somewhere -- 3.5 per cent was your calculation, some
18 relatively low percentage of self-identifying natives
19 in 1981, there are areas in the north where the native
20 population is a relatively high proportion of the
21 population; is that not correct?

22 A. The distribution varies across
23 northern Ontario, yes, that's correct. There are also
24 areas -- if you refer to the page after page 6, the
25 same statistics are given for Cochrane and Brent and

1 Thunder Bay districts, Algoma and Sudbury and they are
2 in the 3 to 6 per cent range.

3 Q. Yes. Now, do you agree or have you
4 seen the data or the analysis that says that away from
5 the major urban areas for the last 25 years the white
6 population has been declining absolutely, whereas the
7 native population has been increasing at a rate greater
8 than the national or provincial average?

9 A. I am not sure I have seen a single
10 publication that compared those. I am aware of those
11 two conclusions. Non-urban growth is being out based,
12 if you will, by urban growth and the native population
13 is growing, yes. I don't question your conclusion
14 there.

15 Q. And that is because things like the
16 forest industry are becoming much less labour intensive
17 so there are fewer white men in the bush, whereas the
18 Indian population has been increasing on the reserves.
19 Would you agree with that just generally?

20 A. That may be one of the factors. It
21 is probably a lot more complex than strictly that
22 factor.

23 Q. All right. Just suggest to me some
24 other factors that may affect these trends?

25 A. An abundance of employment

1 opportunities in large urban centres in the south,
2 people moving there, more manufacturing.

3 Q. That would cause, I take it - if I
4 understand your answer correctly - that would cause the
5 non-Indian population in the non-urban areas of the
6 north to decline; is that what you are saying?

7 A. It would cause the population of
8 rural areas in the north to decline.

9 Q. Both native and non-native?

10 A. Yes.

11 Q. Well, that I suggest is not
12 responsive in that case because I was wondering what
13 other factors came to your mind which might cause this
14 trend that I think you have agreed you have seen
15 reference to, the trend of absolutely declining
16 non-Indian population and fairly rapidly increasing
17 Indian population in non-urban areas of the north?

18 A. I can't explain the increase in the
19 native population in the non-urban areas, I think that
20 is the way you worded it, in the north.

21 Q. Well, you are suggesting that the,
22 let's just call them the non-native towns, might be
23 declining in population because of employment
24 opportunities elsewhere in the south for instance?

25 A. True and perhaps lack or limits to

1 employment opportunities in some small urban towns. A
2 mine that closes.

3 Q. Now, you gave some actual statistics,
4 these are included in the charts, let's just see if I
5 can find one. Excuse me. I may have to return to this
6 in a moment.

7 Do you agree, sir, that you did quote the
8 figure of 905 native people employed in forestry in
9 1981?

10 A. Forestry in that sense being defined
11 as the primary industry, that's--

12 Q. Yes.

13 A. --a quote right out of the report I
14 drew on.

15 Q. That is one of the -- here we are,
16 figure 21 at page 84 of your filed materials. That
17 would be one of the charts from the consultant's report
18 which I referred to but haven't filed as an exhibit
19 yet; is that right?

20 A. Correct.

21 Q. And if we look towards the lower
22 left-hand portion of that chart, we find near the title
23 or the subtitle Natives, the entry: Forestry, 48 per
24 cent, 905.

25 And that is your source, I take it, for

1 saying that in 1981 there were 905 native people
2 employed in the primary industry of forestry, the
3 primary side of the forestry industry?

4 A. That's the source.

5 Q. And if I am not mistaken, the total
6 native population in Ontario at that time, according to
7 your data derived from the same source, is 110,550?

8 A. Yes.

9 Q. Now, if 905 of those 110,550 are
10 employed in the primary aspect or sector of forestry,
11 is my arithmetic right, that's less than one per cent?

12 A. Correct.

13 Q. Now, just in your evidence on the
14 6th, after you gave that figure of 905 Indians, you
15 went on to refer to the fact that very few natives
16 appear in the statistics as being employed in fishing
17 and trapping. Do you recall that evidence?

18 A. That's correct, yes.

19 Q. And so there we would look at the
20 same figure, right, Figure 21 on page 84 and we would
21 find 95 native people engaged in the primary sector of
22 fishing and trapping?

23 A. That's correct.

24 Q. Sir, I think elsewhere you had
25 something over 3,000 native people with trap lines. So

1 my question to you is: Do you take that figure of 95
2 seriously or how are we to interpret that?

3 Are we to genuinely believe that in 1981
4 only 95 native people in all of Ontario were employed
5 workers in the fishing and trapping business? Surely
6 there must be some interpretation we have to put on
7 this, otherwise I think everybody in this room would
8 simply have to scoff and say somebody made an error?

9 A. No. Again, I believe that number is
10 within the confines of how Stats Canada terms are
11 defined.

12 My understanding is, first of all, it is
13 self-declared to be fishing and trapping. Some
14 people -- it has been my experience in Moosonee that
15 while a good number of the residents fished and
16 trapped, it would, in many cases, not be viewed as a
17 job, it would be viewed as part of lifestyle, if you
18 will.

19 If you ask a person who spent all winter
20 on the trap line, in the summer asked them what their
21 job was, you may or may not get the answer of trapper.
22 I think that's one of the problems with the Stats
23 Canada data.

24 I believe that data - and I would have to
25 check - also speaks to people that are in -- and again

1 we found this in documents when we tried to look at
2 employment rates in Moosonee, was that I think there is
3 a limit there, to be in the work force you have to be
4 actively seeking employment in the last 26 weeks, I
5 believe it is.

6 If a person has been unemployed for
7 longer than that, then they don't turn up in this data.
8 There is a problem with the information, I agree.

9 Q. Would you also agree with me that
10 some persons would not identify themselves as
11 fishermen, for instance, and as trappers - and I am not
12 restricting my question to native people - but some
13 wouldn't -- they would like to, but they don't have a
14 licence, or they would like to because their licence
15 was taken away from them, or they would like to but
16 they don't have enough quota on their fishing licence
17 or they would like to, but their trap line licence
18 wasn't renewed when their father died or any number of
19 things that prevents a person from being what he or she
20 wants to be?

21 A. Yes, including the fact that there
22 may not be enough resource to support what he or she
23 would like to be.

24 Q. As defined by not he or she, though,
25 as defined by the Ministry of Natural Resources?

1 A. Most cases, yes.

2 Q. Now, in what cases would that not
3 be --

4 A. You are correct, defined by the
5 Ministry.

6 Q. There is really in Ontario no other
7 authority that defines those things; is there?

8 A. As I understand it, that's our
9 mandate, sir, as set out in our goal.

10 Q. You don't even have a checking
11 Ministry as it were, you don't have anybody looking
12 over your shoulder; do you?

13 If you say there is a thousand fish in
14 the lake and you employ all the biologists, whether
15 they have ever taken a course in biology or not, you
16 are the one who tells the person who lives on that lake
17 whether he gets a licence or not because there is only
18 a thousand fish or because there is an extra thousand
19 fish in it; right? There is nobody else there?

20 MR. FREIDIN: He didn't say they hired
21 biologists, he said biologists...

22 MR. KENRICK: And I believe we hire
23 professional staff who make good judgments. Also your
24 question about watch dog or whatever your terminology
25 was, as with any ministry of the Ontario Government, we

1 are accountable to a minister and the legislature as is
2 every other ministry.

3 MR. COLBORNE: Q. Oh, well, we may get
4 into that. I would like to ask you a few questions
5 then.

6 Maybe I will save these for Mr. Crystal
7 about any guidance that appears in any legislation, in
8 any regulation, in any Order-in-Council about
9 quantities of wildlife or how one determines wildlife,
10 but I think I will ask that of other witnesses. I
11 don't think you have been invited here to be able to
12 deal with those issues.

13 THE CHAIRMAN: Mr. Colborne, could we
14 utilize this point in your examination for a
15 mid-afternoon break?

16 MR. COLBORNE: Certainly.

17 THE CHAIRMAN: Very well. The Board will
18 break for 20 minutes.

19 ---Recess taken at 2:30 p.m.

20 ---Upon resuming at 3:00 p.m.

21 THE CHAIRMAN: Thank you, ladies and
22 gentlemen. Please be seated.

23 Mr. Colborne?

24 MR. COLBORNE: Thank you.

25 Q. Mr. Kenrick, I was asking you

1 questions about native employment and I want to
2 continue first by just asking you to agree with some
3 numbers that appear both in your report and I believe
4 in your oral evidence last week that on-reserve the
5 employment rate is 36 per cent according to the data
6 you had; that is, on-reserve registered Indians,
7 whereas the non-native rate is 64 per cent or
8 thereabouts?

9 MR. KENRICK: A. That' correct, from the
10 bottom of page 83.

11 Q. And those deemed to be eligible to
12 fall into the group that makes up the hundred per cent
13 in either case are those who have been employed or
14 looking for work in the previous 26 weeks; is that your
15 understanding?

16 A. I believe the total is the labour
17 force figure and to be actively in the labour force I
18 believe it is a 26-week limitation on it, yes, my
19 understanding.

20 Q. Right. So if my arithmetic is
21 correct, the employment rate on reserves is probably
22 between 50 and 60 per cent of the non-Indian rate?

23 A. That is what those numbers would
24 suggest, the 36 versus 64.

25 Q. Do you have any data on trends,

1 whether that is getting better in terms of the spread
2 or whether it is getting worse?

3 A. No, I don't. Just again, that is I
4 believe Stats Canada information and, at best, I assume
5 1986 would be another source of it, and it is less
6 reliable. I don't know the trends.

7 Q. Have you looked at all at the 1986
8 census publications--

9 A. No, I have not.

10 Q. --from Statistics Canada? So you
11 don't know whether Statistics Canada has published any
12 data from the 1986 census that have to do with natives
13 or not; is that correct? You simply have no idea one
14 way or the other?

15 A. I think I have looked at some 1986
16 data and, if I recall, there was a footnote at the
17 bottom of it to say that it excluded some native
18 communities. I think that was '86 data where I saw
19 that reference, but I didn't use it in preparing this
20 witness statement.

21 Q. All right. Now, you did say that the
22 Ministry has a long-standing history of encouraging
23 natives to participate in timber management activities
24 from an employment point of view.

25 I think you practically read that into

1 the record, and that would appear at the top of page 86
2 of the written materials and in the transcript of your
3 oral evidence; is that correct?

4 A. That's correct.

5 Q. Now, you went on to give some
6 examples and most of those examples are more recent
7 than 1981. 1981, you will recall, is the year when
8 there were 905 native people employed in the primary
9 sector of the forest industry.

10 My question to you is this: Do you think
11 that with the long-standing history of encouragement
12 that you claim your Ministry has, that you have been
13 more successful since 1981 and you have got maybe over
14 the thousand mark accomplished?

15 Do you think there might have been an
16 increase into the four figures in the number of natives
17 employed in the primary sector of the forest industry
18 as a result of your long-standing history of
19 encouraging native employment in that area?

20 A. I would hope so, but I have no way of
21 having a database. As I mentioned in my evidence,
22 those kinds of statistics are extremely difficult to
23 get, to get summaries. I would be guessing.

24 Q. Why is it so hard to get that data?

25 A. Generally, we cannot collect data by

1 cultural group. There is some limitations in terms of
2 the types of records that we can keep and conflicts
3 with the Human Rights Code.

4 Q. Yes, I am aware that you gave some
5 evidence to that effect. Can you just explain that to
6 me a little bit. I have heard that more than once but
7 I have never had anybody point me to a section of the
8 Ontario Human Rights Code or to any interpretation of
9 of it or to any principle of law or proper public
10 administration that makes any sense to me in terms of
11 the type of answer that you have just given.

12 What can't you do? Why are you prevented
13 somehow by the Ontario Human Rights Code from having
14 data on the number of native people who are employed?

15 A. I can't give a legal answer to that.
16 I do know when I went searching for a better database
17 than what is here, I went to the Human Resources
18 Secretariat and was told it doesn't exist.

19 I tried through the financial accounting
20 people in our organization to see if I could get at
21 records related to payrolls where there wasn't
22 taxation, taxes taken off, for instance, and I was told
23 it just wasn't available. And the reason was that
24 there are some restrictions on the type of information
25 we can collect such as recording a person on a job

1 application, recording whether a person is native or
2 non-native or any other nationality or cultural group.

3 I was also advised that if -- under the
4 employment equity program, those groups that are felt
5 to be under represented in the Ontario government, that
6 they are -- I believe there is an exemption in terms of
7 some information can be kept there but I am advised
8 that if it is -- that those records are be kept by the
9 Human Resources Secretariat for all of the agencies of
10 the Ontario government and not separate data sets
11 collected by individual ministries.

12 Q. Well, do you have any idea of why
13 your Ministry was able to survey its employees and
14 determine that 2.8 per cent of them were native if
15 there were these restrictions that you are referring
16 to?

17 A. I would expect that to some extent
18 that was done under the -- I don't know the answer to
19 that directly, but it was voluntary to start with,
20 there was employees that didn't answer those
21 questionnaires. And, secondly, my understanding -- I
22 wasn't the recipient of it, I have not seen that. I
23 have seen summaries of it, but it was voluntary to some
24 extent.

25 Q. Well --

1 A. I don't know.

2 Q. Okay. I don't know either, you do
3 have me confused.

4 MR. COLBORNE: I wonder if I could ask,
5 with your permission, Mr. Chairman, Mr. Freidin if he
6 could give an undertaking to explain that one. I am
7 honestly left with some doubt as to whether the Ontario
8 Human Rights Code stands in the way of having the data
9 that the witnesses do not have.

10 MR. FREIDIN: I will make some inquiries
11 and I will advise Mr. Colborne if the information is
12 different than the information that was given and if it
13 is different, I will give him some information about
14 it.

15 THE CHAIRMAN: All right. I think the
16 easiest way, Mr. Freidin, would be going to the Human
17 Resources Secretariat and asking them point blank for
18 the statutory or other basis upon which they have given
19 this information to Mr. Kenrick.

20 MR. FREIDIN: I am content to ask them
21 that.

22 MR. COLBORNE: Q. I mentioned just a
23 moment ago, sir, that you did give evidence that 2.8
24 per cent of your employees were native. I will just
25 read to you from the transcript for a moment.

1 I am reading from page 7280 at the bottom
2 of the page for date September 6th, 1988. You said:

3 "In 1986 there was a survey of the
4 Ontario Public Service and it indicated
5 that 2.8 per cent of the surveyed
6 Ministry of Natural Resources' staff was
7 composed of natives, 70 per cent of these
8 were 'located in the northern regions'."

9 Now, I read that to you just so I could
10 get directly to the point. I want to know what
11 percentage of all MNR staff are "located in northern
12 regions"?

13 MR. KENRICK: A. I couldn't answer that
14 off the top of my head.

15 MR. COLBORNE: Mr. Chairman, I would like
16 an undertaking on that too because otherwise the data
17 that the witness gave is sort of: we have got an
18 apple, we have got an orange, then we have got an
19 apple, but we haven't got the second orange.

20 MR. FREIDIN: I didn't hear the line of
21 questioning so perhaps you can just repeat what it is
22 you want.

23 MR. COLBORNE: What percentage of all MNR
24 staff are "located in northern regions"?

25 MR. FREIDIN: We will provide that

1 information in relation to the classified staff of the
2 Ministry of Natural Resources. I am not sure whether
3 there would be a problem with non-classified, so that
4 is why I understand to be undertaking to that.

5 THE CHAIRMAN: Non-classified being
6 seasonal?

7 MR. FREIDIN: By and large, yes.

8 MR. COLBORNE: Well, Mr. Chairman, I just
9 want to be able to compare with the 70 per cent figure,
10 so therefore I have to ask the witness.

11 Q. The 70 per cent figure that you gave
12 as being the percentage of native Ministry employees
13 "located in the northern regions", is that classified,
14 unclassified or what?

15 MR. KENRICK: A. I believe the survey
16 surveyed both classified and unclassified staff.

17 MR. FREIDIN: What page are you looking
18 at, where does the statistics show up?

19 MR. COLBORNE: Page 7280 of the
20 transcript for September 6th.

21 MR. FREIDIN: I can't comment further,
22 Mr. Chairman. I will take a look at page 7280, I will
23 determine what I believe it means and try to get the
24 information to answer the question.

25 MR. COLBORNE: Well, Mr. Chairman, I

1 don't want to drop it because what Mr. Freidin said is
2 that he would get the number for classified employees
3 and what this witness said is that the comparable
4 figure he gave was for classified and unclassified.

5 So I don't think what Mr. Freidin gives
6 me will help.

7 THE CHAIRMAN: All right. I think at
8 this point, Mr. Colborne, we will direct the Ministry
9 to make the necessary inquiries to try and obtain the
10 percentage of native staff in the northern regions of
11 both classified and unclassified as that was the basis
12 upon which the other comparison was made.

13 MR. COLBORNE: Not quite.

14 THE CHAIRMAN: Sorry.

15 MR. COLBORNE: I am sorry. Mr. Chairman,
16 you probably don't have in front of you the transcript
17 so maybe my question isn't clear. The witness told us
18 that. I want to know the percentage of all employees
19 in that region, all MNR employees.

20 We know that 70 per cent of those who are
21 native are in the northern regions. I want to know
22 what per cent of all employees are in the northern
23 regions.

24 THE CHAIRMAN: I see. Well, I think the
25 Board would like the Ministry to attempt to ascertain

1 that information for Mr. Colborne. If, for some
2 reason, you have difficulties in arriving at that
3 information, come back to the Board and explain why you
4 can't do it.

5 MR. FREIDIN: That is no problem.

6 THE CHAIRMAN: Thank you.

7 MR. COLBORNE: Thank you, Mr. Chairman.

8 Q. Now, sir, you also gave us some
9 statistics on the per cent of employed natives in the
10 tertiary industries, and you produced Figure 22 at page
11 85 of the materials. That is another figure from the
12 consultant's report that we referred to.

13 And you pointed out that in those
14 industries; that is, in the tertiary industries, about
15 73 per cent compared to 72 per cent of non-natives are
16 employed in that sector, the tertiary sector.

17 Now, what I want to know from you is:
18 What does that tell us? What does that communicate? I
19 fail to understand any point that that makes.

20 MR. KENRICK: A. The only point I was
21 making there is that of employed natives and
22 non-natives, the percentage of the total that is
23 working in the tertiary industries is approximately --
24 is more or less the same, the difference being one per
25 cent.

1 Q. Is there any reason why one would
2 expect otherwise, any logical common sense reason?
3 There is only one wage economy out there.

4 A. I guess it doesn't surprise me.

5 Q. Now, sir, I want to ask you a
6 question which you may consider a little provocative
7 and so I will give you that fair warning and the
8 Chairman and Mr. Freidin.

9 I want to read to you three sentences
10 from your evidence of the 6th. I am reading from page
11 7282 of the transcript. You said:

12 "From my experience, one of the
13 limitations on us hiring native people is
14 finding qualified people in the first
15 place. I wish there was more native
16 people that attended resource management
17 schools. When I was in Moosonee we
18 found two local chaps and both of them
19 are very close to being on staff right
20 now."

21 Now, sir, you are an educated man, tell
22 me, does that not sound like what used to be said about
23 women, what used to be said about blacks and so on and
24 so forth: Too bad we can't employ them but they just
25 don't have it, they don't have the education, they

1 don't have something?

2 Doesn't that ring exactly true to you
3 from those other examples that I have mentioned?

4 A. It certainly wasn't intended that
5 way.

6 Q. You would agree that it is common
7 knowledge that the Cree and Ojibway people survived
8 quite nicely in northern Ontario long before any
9 Europeans arrived?

10 A. I understand so, yes.

11 Q. And did so from the natural resources
12 that were located here, at least that provided the
13 economic basis for their culture and existence? You
14 would agree -- don't you think--

15 A. I understand so, yes.

16 Q. --that is commonly accepted? Yes.

17 A question or two, sir, about parks. You
18 have given some information about provincial parks. My
19 question is this: Is it the position of Ontario - and
20 Mr. Crystal may have something to say about this - that
21 once there is a provincial park in place, that is land
22 to which Indians no longer have their hunting, fishing,
23 trapping and so on access rights, that this is land
24 which has now been "taken up", to use a couple of words
25 that often appear in treaties?

1 MR. CRYSTAL: A. If I could answer that
2 question.

3 Q. Yes.

4 A. Whether or not it is taken up, I
5 suppose is a legal issue which hasn't been resolved and
6 I don't intend to address that.

7 Q. No, the question is the policy;
8 policy not rights.

9 A. Okay. But as a matter of policy in
10 northern Ontario, notwithstanding that provincial parks
11 are under regulation, at least status people continue
12 to have the ability to harvest natural resources
13 according to their traditions.

14 Q. That applies in Quetico Park; does
15 it?

16 A. I believe so.

17 Q. When you say according to their
18 traditions, what does that mean? Is that a way of
19 saying, as long as they don't use a motor?

20 A. I hadn't intended it that way.

21 Q. Well, what did you mean then? I want
22 to understand -- why don't you get directly to the
23 point, sir.

24 A. Well, in general, I think we talk of
25 traditional native harvesting practices and that those

1 are continued in those areas that have gone into
2 regulations for parks.

3 Q. Okay. Well, I think -- Mr. Crystal,
4 I thank you very much for that answer, perhaps we will
5 return to that when I get to you--

6 A. I am sure we will.

7 Q. --because I am not quite finished
8 with that one.

9 Mr. Kenrick, I want to ask you a question
10 or two about trapping -- excuse me, first about mining.
11 You gave some evidence about mining. Do you agree,
12 sir, or do you know that there is little or no mining
13 on Indian reserves in Ontario?

14 MR. KENRICK: A. That would be my
15 understanding. I assume what you mean is there are--

16 Q. Producing mines.

17 A. --very few producing mines?

18 Q. Yes.

19 A. That is my understanding.

20 Q. What is your understanding about the
21 reason for that?

22 A. I am not sure of a policy reason. I
23 don't know how extensive exploration has been on Indian
24 reserves.

25 Q. Let me ask you this: Is it because

1 Ontario claims to own the minerals under Indian
2 reserves?

3 A. Mr. Crystal may be in better position
4 to answer that in a policy sense.

5 Q. Well, Mr. Crystal, can you help is on
6 that one?

7 MR. CRYSTAL: A. If your question is:
8 Is it stated Ontario policy that Ontario owns the
9 minerals under Indian reserves, I have never seen that
10 policy statement myself and somebody who is -- someone
11 who I feel, I think that I am relatively familiar with
12 the native policy and I have not seen that statement.

13 Q. Have you seen a contrary statement?

14 A. I have been involved in discussions
15 about mineral rights on Indian reserves which would
16 lead me to believe that the contrary might be a
17 possible view.

18 Q. Do I understand there is no policy
19 or...

20 A. Any hard and fast policy on the
21 issue, I don't believe that there is.

22 Q. And so if you were, sir, an --

23 A. At the present day, at the present
24 day.

25 Q. --executive of a mining company who

1 thought that there was the possibility of development
2 on an Indian reserve and you contacted the Province of
3 Ontario and said: Do you own it or do the Indians own
4 it, what answer would you get?

5 We don't know, we don't have a policy, we
6 have been talking about it for 50 years and we intend
7 to talk about it for another 50 years. Is that the
8 answer they get?

9 A. You are asking me a hypothetical and
10 I could give you the answer which would be my best
11 guess at how the hypothetical would work out. Is that
12 what you want me to give you the answer to?

13 Q. What do you believe would be the
14 answer of an Ontario official to that inquiry?

15 A. If a mineral exploration company
16 called up the Ministry of Natural Resources and
17 asked -- well, first of all, it would be mistaken to
18 call the Ministry of Natural Resources given that the
19 Ministry of Natural Resources is no longer the ministry
20 responsible for mining in this province.

21 Q. I agree, at the present time.

22 A. Yes.

23 Q. But since this is a hypothetical, we
24 can go back a short period of time and assume it is
25 still within the Ministry.

1 A. Well, I should precede my answer by
2 saying that it would properly be most appropriate for
3 someone from the Ministry of Northern Development and
4 Mines to answer that question and --

5 Q. Well, I don't think we have any
6 witnesses from other ministries coming here, do we?

7 A. No.

8 MR. COLBORNE: Maybe Mr. Freidin can help
9 me?

10 MR. FREIDIN: I don't know. You would
11 have to ask Mr. Campbell about that one.

12 MR. COLBORNE: But the proponent is not
13 calling members of other ministries; am I not correct,
14 Mr. Freidin?

15 MR. FREIDIN: At the present time we are
16 not intending to call anyone from the Ministry of
17 Northern Development and Mines.

18 MR. CRYSTAL: Well, if I could try to be
19 helpful here. Again, it is perhaps beyond my bailiwick
20 to presume to speak for the Ministry of Northern
21 Development and Mines, I am sure that it is, but again
22 you have asked a hypothetical.

23 THE CHAIRMAN: With all the caveats that
24 both of you gentlemen would like to put on the
25 question, why don't we just try and hone in on a

1 possible answer.

2 I understand you are not speaking for
3 anyone other than yourself, trying to be helpful: If
4 the question were posed, say, to you as an official of
5 MNR.

6 MR. CRYSTAL: Thank you, Mr. Chairman,
7 that is a good way of putting it. I would think that
8 the Ministry of Natural Resources would suggest to the
9 mining company that: reach some accommodation with the
10 Indian band and then let's see where we are. That
11 would be my best guess.

12 MR. COLBORNE: Q. And do I recall you
13 saying that you have had some substantial enough
14 involvement in this issue that you felt comfortable to
15 answer that question?

16 MR. CRYSTAL: A. Well, I know that there
17 is a piece of legislation that governs the issue at the
18 present time. That legislation may very well be
19 replaced in the next little while. That legislation is
20 something called the 1924 Indian Lands Agreement.

21 Q. Okay. Sir, did you yourself have any
22 part in the 20 some years of re-negotiation which was
23 intended to lead to a change or replacement or updating
24 of that agreement?

25 A. I would say towards the tail end of

1 the 20 years, yes, I did have some role in that
2 process.

3 Q. All right.

4 A. And while, if I might continue the
5 answer, I think that the Board deserves to understand
6 that issue a little bit.

7 Q. Well, I am not asking you, unless--

8 A. Well, you have asked me --

9 Q. --the Board thinks that this is
10 responsive to the question. I just asked the witness
11 if he was involved with that.

12 THE CHAIRMAN: No, but I thought you
13 wanted to go further with the previous answer; is that
14 correct?

15 MR. CRYSTAL: Yes, yes, yes.

16 THE CHAIRMAN: Where we are up to, Mr.
17 Colborne, is that MNR might say, if you want an answer
18 to that question, reach some accommodation with the
19 particular Indian band and then we will go on from
20 there.

21 MR. COLBORNE: Very well, Mr. Chairman.
22 I guess I was trying to avoid the thing that you, I
23 believe, wanted to avoid and that is a lot of debate
24 about what the law may be on ownership, but I am quite
25 prepared to embark on that.

1 THE CHAIRMAN: Well, I thought we were
2 dealing with this from a policy standpoint as opposed
3 to a legal position to start off with.

4 Why don't you just continue for a moment,
5 Mr. Crystal?

6 MR. CRYSTAL: Okay. I just thought that
7 Mr. Colborne has raised this issue about the 1924
8 Indian Lands Agreement. I just thought it would be
9 helpful, because it may be arise again, to try to give
10 you a little bit of background on that.

11 Essentially, there is a term in this 1924
12 Indian Lands Agreement that states that mineral and
13 sub-surface royalties are to be - and correct me if I'm
14 wrong Mr. Colborne, you may be more knowledgeable than
15 me on this - but that 50 per cent of those royalties
16 would accrue to the Ontario government and the other 50
17 per cent would accrue to the federal government to be
18 held in trust for the benefit of the Indian band.

19 Now, I think all parties have seen that
20 arrangement as somewhat unsatisfactory and the 20-year
21 period that Mr. Colborne has been referring to has been
22 a period of time where the First Nations of Ontario and
23 the Government of Ontario and the federal government
24 have sought to reach an accord whereby that requirement
25 to share the mineral royalties in that way could be

1 rectified so that the band might share a more complete
2 share of the royalties.

3 Ultimately, the proposed legislation is
4 legislation which permits Indian bands and the federal
5 government and the provincial government to enter into
6 subsidiary agreements on that issue, as well as various
7 other issues which might be of interest to those bands
8 and to the respective governments.

9 And to the extent that those subsidiary
10 agreements were inconsistent with the terms of the 1924
11 Indian Lands Agreement, those subsidiary agreements
12 would override the 1924 Indian Lands Agreement.

13 Now, I should tell you that one of the
14 problems with the 1924 Indian Lands Agreement is that
15 there is considerable legal debate on whether or not,
16 as a result of the drafting of that legislation, it
17 actually does what it purports to do. And so one of
18 the reasons that this new arrangement is being sought
19 is because there is considerable doubt about whether or
20 not the 1924 Indian Lands Agreement actually wraps up
21 the issue of Indian -- of royalties on lands under
22 Indian reserves.

23 So if I could, just to summarize it:
24 There is a piece of legislation which purports to
25 govern the situation. There is considerable legal

1 debate on whether it actually does and the Governments
2 of Canada and Ontario and various First Nations in
3 Ontario are seeking to resolve this through a
4 legislative scheme.

5 I believe that it has had -- it will be
6 reciprocal legislation in the federal and Ontario
7 governments. I believe that the legislature has had
8 its final reading in the federal government, it has not
9 in the Ontario government.

10 THE CHAIRMAN: Okay.

11 MR. COLBORNE: Q. Mr. Crystal?

12 MR. CRYSTAL: A. Yes, Mr. Colborne?

13 Q. The legislation that you referred to,
14 the 1924 Land Agreement which is referred to as an
15 agreement, that is your term, and I agree that is the
16 term that is used.

17 A. Well, I believe the actual title of
18 the Act is called the 1924 Lands Act.

19 Q. It is a statute, right?

20 A. Indian Lands Act, yes.

21 Q. We are talking about statute law
22 here. Now, we were talking about policy?

23 A. Yes.

24 Q. Is it not true that it has been
25 throughout the policy of the Government of Ontario that

1 it will give the Indians 50 per cent of the revenues
2 from any mining on their reserves because they have
3 some surface rights on the reserve, that this was
4 stated again and again by representatives of Ontario at
5 meetings that you yourself attended?

6 This was not Ontario saying: We are
7 being real nice to the Indians, we will give you 50 per
8 cent of the royalties and the minerals under your
9 reserves. This was Ontario saying: In order to get at
10 the minerals we have to use some of your surface rights
11 so, therefore, we will give you 50 per cent but we want
12 the other 50 per cent.

13 Isn't that the rationale, it was the
14 rationale from day one, I suggest.

15 A. Well, Mr. Colborne, if I was involved
16 in a meeting where that was the rationale that was
17 ascribed, I can't explain it. I was never present at a
18 meeting where that rationale was ascribed.

19 Q. Okay, let me ask you another
20 question. Is it not true that Ontario was invited
21 simply to agree that the minerals under Indian reserves
22 ought to belong to the bands who occupied those
23 reserves, but Ontario said: No, we want a quid pro quo
24 from the Indians?

25 You were at meetings where that phrase

1 quid pro quo was used at least 100 times; am I not
2 correct?

3 A. I believe that I was present at
4 meetings where the words quid pro quo were used.

5 Q. And the quid pro quo - let's be
6 exactly clear on this - was Ontario was saying: We
7 will give up our 50 per cent or our 100 per cent or
8 whatever it is to you Indians, we will give you your
9 minerals - or sorry, maybe that is being unfair - we
10 will give you the minerals under your reserves, but you
11 have to give us something back?

12 A. Well, Mr. Colborne--

13 Q. That is what quid pro quo is?

14 A. --I would describe the dynamics
15 somewhat differently than you have described. I think
16 that Ontario foresaw the need for certain negotiations
17 to take place as a result of these mineral rights and
18 thought that it would be a good opportunity to resolve
19 several other outstanding opportunities that Ontario
20 might have with that Indian band.

21 Q. So you would use that hook of a claim
22 to minerals, and I am not sure if there was any
23 explanation ever as to how the hook got in there, but
24 that hook to try to get some other concessions out of
25 Indians. Is that what you are saying?

1 A. I would use the word opportunity
2 rather than hook.

3 Q. The substitute for the 1924 Land
4 Agreement that you have been referring to is not yet
5 law; is that correct?

6 A. Well--

7 Q. And it may never be.

8 A. --Mr. Colborne, if you will let me
9 answer your question.

10 It is law I believe, I believe that it is
11 federal law. However, I believe - and I am just
12 working from memory here and I haven't reviewed it for
13 the purposes of this hearing - I believe that there is
14 a term in the agreement/legislation that suggests that
15 this legislation agreement will not come into force
16 until such time as the second of the governments enacts
17 the legislation.

18 And at this time the federal government
19 has enacted it; the process is not complete in the
20 Ontario government.

21 So in a sense it is law in that it is
22 federal law but, in another sense, it is not because
23 Ontario has not completed its portion of the enactment.

24 Q. Do you have -- that's fine, thank
25 you.

1 Mr. Kenrick, I want to ask you a question
2 or two about trapping. You said that there were
3 approximately 3,200 treaty Indians what have registered
4 trap lines and you describe some of your own experience
5 in the north where you would sit down with trappers and
6 negotiate where historically those trappers had
7 trapped.

8 My question is this: Is it your
9 understanding that that's the way traditionally that
10 trap lines got mapped and registered, that members of
11 your Ministry or its predecessors went out and spoke to
12 the trappers who were actually trapping, identified
13 where they were trapping, who they were and so on, put
14 it on maps and eventually -- or, over a period of time,
15 it became the registered trap line system that we have
16 today.

17 Is that your understanding of the
18 history?

19 MR. KENRICK: A. I wouldn't want to make
20 the statement I think provincially. It is my
21 experience that across the far north that's the process
22 that went through to identify the trapping area, for
23 instance, of the Winisk Band, it was a dialogue.

24 Q. Well, let me suggest to you that
25 that's the process that went through -- was gone

1 through in the areas further south than the far north
2 as well, that the Indian trappers were approached, that
3 they were told that their trap lines were being mapped
4 and documented to protect them, and that they would
5 have a licence and then within usually about a
6 generation the licence was cancelled and that was the
7 end of their trapping.

8 Do you see a sequence like that happening
9 further north?

10 A. No, that hasn't been my experience
11 that that sequence has happened any way.

12 Q. What about when the non-Indians want
13 the trap lines in the area that you are talking about
14 in the far north, this is a decision for the district
15 manager; isn't it?

16 What if he wants to help out his buddies,
17 the good old boys and he doesn't like Indians. The
18 Indians lose the trap lines, right, because this is the
19 Ontario registered trap line system now, it is no
20 longer the family traditional area that was originally
21 identified?

22 A. You are getting awfully hypothetical.
23 I can't see that scenario unfolding. To my experience,
24 at least in Moosonee, we have not taken trap lines away
25 from native people.

1 I think if the question came up or a
2 request came in and it was my judgment, sitting in
3 Moosonee, I would refuse it. Those trap lines are
4 taken up by native people and they will stay that way.
5 That would be my decision.

6 Q. Okay. Do you agree that there have
7 been many Indians who have lost trap lines in areas of
8 the province other than the far north where you were in
9 the position of district manager?

10 A. I don't know the stats on that. I
11 couldn't agree or disagree with that statement, I just
12 don't know.

13 Q. Up there in Moosonee, does the
14 Ministry require what Indians farther south call
15 literacy tests; that is, if you want to keep your trap
16 line you have to study these books prepared by the
17 Ministry of Natural Resources and go to these courses
18 taught by employees of the Ministry of Natural
19 Resources and if you pass your literacy test you can
20 keep your trap line?

21 Do they have those up there?

22 A. I don't recall the reference to
23 literacy test.

24 Q. No, that's what the Indians call it,
25 I don't know what --

1 A. Could be, I don't know. I am aware
2 at the request of bands we have been asked to go in,
3 usually using native people as instructors, and put on
4 a trap line management course. That's been at the
5 request of the natives.

6 Q. Well, do you know anything about any
7 requirement anywhere in Ontario upon persons who are
8 owners of registered trap lines or wish to be owners of
9 registered trap lines to have some kind of
10 certification that is issued by your Ministry to pass a
11 course or anything?

12 A. I understand that all new trappers
13 are required to take a - I am not sure of the
14 terminology - a fur management course, an instruction
15 from this Ministry prior to obtaining a trap line area.
16 That's applied to new trappers.

17 Q. And they have to write a written
18 exam; is that not correct?

19 A. I am not sure if there is an exam
20 part of it, there well could be.

21 Q. In any case, let me ask you if you
22 are sure of this: Is the course conducted in English?

23 A. Again, my experience in Moosonee
24 where we did have one of those, the person who was
25 doing the instructing was a member, I believe, of the

1 local fur council and spoke Cree. I wasn't at it so it
2 is second hand, but we very, very seldom go up the
3 coast without having either someone with us who can
4 speak Cree or we have someone who can translate when we
5 are in the communities.

6 Q. Do you know what the comparable
7 practice would be in, let's just take the Kenora area
8 as an example?

9 A. No.

10 Q. No. Thank you.

11 Sir, in looking through the transcript I
12 noted that Mr. Martel asked you a question and I didn't
13 see that it was answered. So I wonder if I could just
14 read it to you again.

15 I am reading from page 7415 of the
16 transcript for September 7th, 1988. The question is
17 this:

18 "Mr. Martel: Could I ask: In your
19 experience, do you think the trap lines
20 that exist today as they exist are
21 sufficiently large for, let's say, a
22 native family to really make a living
23 from?"

24 Sir, I read the transcript following that
25 and I didn't see that the answer was forthcoming, so I

1 now wish to ask that same question.

2 A. Again, I am going to have to draw on
3 some experiences in Moosonee. The amount of harvest
4 that came off some trap lines would not be enough to
5 sustain the income needs of the family. That I think
6 it is a fair observation.

7 But I think it is a lot more complex than
8 merely the size of the trap line. It is a costly place
9 to do trapping to start with. If you bought fuel up
10 the Hudson Bay coast, if you are going out in the
11 winter and doing your trapping, you have to get an
12 awful pile of fur to pay the gas bill on the skidoo,
13 you very dependent on aircraft.

14 That's one of the reasons it may not be a
15 money-making proposition. There is a problem of
16 distances of trap lines from the community; it is
17 expensive to get to them. I am just not sure it as
18 simple as being a function of only the size of the trap
19 line.

20 Some of the largest trap lines, in fact,
21 probably the largest trap lines in the province are in
22 that country, granted they are less productive and
23 that's why the trap line is so large.

24 Q. Well, let's not deal with it just in
25 terms of geographic size; let's deal with it in terms

1 of productivity and let's address the question as if
2 when the word large is used large doesn't mean number
3 of miles or kilometres, large means the productivity of
4 the trap line.

5 So the question would then be: Are the
6 existing trap lines sufficiently productive for a
7 native family to really make a living from?

8 A. It has been my experience, sir, that
9 on many trap lines - and this isn't confined to native
10 ones by any means - but the actual harvest is generally
11 less than the quota in the first place. I am not sure
12 the limiting factor is the productivity on the trap
13 line.

14 Q. Would you agree, sir, that trapping
15 very often is a seasonal source of income?

16 A. Yes.

17 Q. For trappers, both native and
18 non-native?

19 A. Yes.

20 Q. And I think you said as well that the
21 meat value of fur animals trapped can be quite
22 considerable; is that correct?

23 A. Yes.

24 Q. You said I believe that there was an
25 estimate in a report at about \$8-million. Can you

1 refer me to that report?

2 A. I believe that was an econometric
3 study. Somewhere in one of my drafts there was a
4 footnote to that.

5 Q. Actually, sir, I apologize. You do
6 have a footnote which I missed, that I have now found.
7 Would that be the footnote No. 40?

8 THE CHAIRMAN: What page, Mr. Colborne?

9 MR. COLBORNE: The reference in the
10 written materials would be on page 104, the second full
11 paragraph and there is a footnote.

12 I apologize, Mr. Chairman. If I had seen
13 that - and I must have just skipped over it somehow - I
14 wouldn't have asked the question. The witness did
15 provide his source.

16 THE CHAIRMAN: Thank you.

17 MR. COLBORNE: Q. This is the one
18 really where I was, I think, correctly interested in
19 your source because there is no footnote.

20 At page 103 of the prepared materials,
21 your first sentence under Trapping reads as follows:

22 "Ontario is considered a leader in
23 wild fur bearer management and
24 conservation."

25 My question is: By whom and do you have

1 a reference?

2 MR. KENRICK: A. You have a quote or
3 some background to that. I reviewed the recent
4 publication, Wild Fur Bearer Management and
5 Conservation in North America. It is a recent
6 publication the Ministry put out and one of the quotes
7 in that document - and I can go through the Ministry's
8 history of trap line management which dates back to
9 1909 --

10 Q. Just so I am sure, you are now
11 quoting from a publication of your Ministry?

12 A. It was produced in Ontario, I
13 believe, in cooperation with the Ontario Trappers
14 Association.

15 Q. Could you tell me if it appears in
16 your references?

17 A. No, it does not.

18 Q. Okay. In that case, I would ask you
19 to give me the full title once more?

20 A. Wild Fur Bearer Management and
21 Conservation in North America.

22 Q. And this is, I take it, an internal
23 document of your Ministry?

24 A. No, it is not, it is for sale and one
25 can buy it from the Ontario Trappers Association.

1 Q. It is published by the Ontario
2 Trappers Association?

3 A. I am not sure of the publisher. It
4 was a cooperative venture and they sell them.

5 Q. Okay. Now, please go on. You were
6 telling me about what it said in there about Ontario
7 being a leader in wild fur bearer management and
8 conservation?

9 A. If I can just illustrate the
10 statement I made with some facts. In terms of trapper
11 education, all new trappers are required to take a fur
12 harvest and management course that you had mentioned
13 before.

14 Only one other province, I understand,
15 and seven states have that same mandatory requirement.
16 It is I believe the longest course in North America.
17 That document contains a quote to the effect -- it is
18 an Environment Canada reference, states that:

19 "Ontario has some of the most
20 comprehensive humane trapping
21 regulations in North America."

22 There are other initiatives in terms of
23 1912, when the Fur Harvest Record System was set up in
24 Ontario.

25 Q. Oh, yes. I was going to ask you

1 about that. You mentioned a document, and if I
2 understood the title or the partial title that you gave
3 us, it sounded like it was a historical study of the
4 fur industry in Ontario?

5 A. Not only in Ontario, it is in North
6 America.

7 Q. What is the title of that?

8 A. The one I read to you previously?

9 Q. No, the one that you referred to
10 which sounded to my ear to have to do with the history
11 of the fur industry?

12 A. No, I have misunderstood you or you
13 have misunderstood me.

14 Q. Well, I won't take up the time of the
15 hearing. I will ask the reporters perhaps to make a
16 note and I will see if I misheard you and I can follow
17 up on that later if I did not mishear you.

18 Sir, I may have broken into your evidence,
19 if I did, please go on.

20 A. All I was -- the point I was trying
21 to make is drawn from that document on Fur Bearer
22 Management. There is -- the one I have in front of me
23 is a summary of the history of fur bearer management in
24 the province and I think it substantiates the comment
25 that was made in the document, a leader in wild fur

1 management.

2 Q. Just a second.

3 A. It is an opinion that again was held
4 by an Environment Canada report.

5 Q. Perhaps I just got the title of the
6 document wrong. Does the title begin with the words:
7 The history of wild fur bearer management or are you
8 referring to a chapter?

9 A. No, it does not. No, it is called
10 Wild Fur Bearer Management and Conservation in North
11 America. It is six inches thick, 1,500 or so pages, I
12 am not sure of the size of it.

13 Q. Well, sir, I don't want to belabor a
14 point but I just heard you again saying: The history
15 of...

16 Is there a document that you know of or
17 that are you referring to that begins with those words
18 in its title?

19 A. No, there is not.

20 Q. Okay, thank you.

21 A. A portion of the document that I
22 referred to addresses the history of trapping and trap
23 line management and fur conservation in Ontario, but it
24 is not the whole document, nor is it the title.

25 Q. And that document is the primary

1 source for that statement on page 103?

2 A. That's correct.

3 Q. Does that apply also to the sentence
4 that begins at the top of page 104 which reads as
5 follows:

6 "Ontario also leads the world in trapper
7 education, humane trapping research and
8 legislation"?

9 A. Yes, it is.

10 Q. Does the document that we have been
11 referring to as your primary source compare Ontario
12 with any jurisdictions other than those in North
13 America?

14 A. I don't believe so. I think, and I
15 stand to be corrected, but I believe the document
16 addresses North America.

17 Q. Why did you then say in your written
18 evidence that Ontario leads the world? Surely you know
19 that trapping takes place in many more areas of North
20 America than Ontario?

21 A little parochialism perhaps?

22 A. Perhaps. I am willing to change it
23 to North America, but...

24 Q. Thank you. A few questions, sir,
25 about fishing, commercial fishing.

1 A. Page 108, is that your reference?

2 Q. That would be the beginning of your
3 written evidence. Yes, it would appear at page 108 of
4 the material.

5 I want to refer you to your oral evidence
6 which I believe is substantially as appears in the
7 third paragraph or the first non-indented paragraph on
8 page 109 of the materials. And the point I want to get
9 at is the one having to do with fish quotas being
10 frequently discussed, the health of the fishery being
11 frequently discussed, road access being frequently
12 discussed.

13 If I understand it correctly, these are
14 the points that arise between the Ministry of Natural
15 Resources and the commercial fishermen? Is that a fair
16 statement of what you are referring to at that point?

17 A. Generally, yes.

18 Q. Now, my question is: Why in your
19 evidence, both written and oral, is there no hint,
20 whisper or suggestion that one of the issues, certainly
21 I would suggest a major issue, is the question of
22 Indian rights in relation to commercial fishing?

23 Did you leave that out because somebody
24 else was going to be addressing that or did you leave
25 that out because you don't think that that is something

1 that is discussed between your Ministry and the
2 commercial fishing industry?

3 A. No, I think it was left out because I
4 understand the Ministry's position to be that the topic
5 of aboriginal and treaty rights, this isn't the forum
6 that those things are going to be settled in.

7 I am not personally aware - and I stand
8 to be corrected on this - that a great deal of the
9 given that the vast majority occurs on the Great
10 Lakes...

11 Q. No, no, sir -- well, go on.

12 A. I am not aware whether that is a
13 constant topic of discussion between ourselves and the
14 commercial fishing industry.

15 Q. But did I understand you to say that
16 you left it out of your evidence because you thought
17 that that was something that this Board was not going
18 to deal with; in other words, you have been tailoring
19 your evidence according to what you preconceive is
20 within the jurisdiction of the Board?

21 A. No. It is not a topic that comes up
22 frequently.

23 Q. A few questions, sir, about
24 commercial tourism.

25 A. I just note that in the paragraph

1 before that one that you just made reference to, there
2 is a reference to commercial fishing in northern native
3 communities and I believe in the transcript I gave some
4 illustration of individual communities.

5 Q. Those are Sandy Lake, Round Lake,
6 McDowell, White Fish Bay, Rocky Bay, Fort William?

7 A. I believe that's the reference.

8 Q. Is there discussion with the native
9 people who live at those locations about Indian rights
10 in the context of commercial fishing?

11 A. I couldn't answer that generally, I
12 don't deal with it at that level of detail.

13 Q. Now, tourism, sir. I was quite
14 interested in the statistics because wouldn't you agree
15 that some people have always thought that the
16 statistics on tourism were frankly incredible, that
17 people would talk about millions and millions and
18 millions of dollars and yet some people would look
19 around and say: Where did you get that from?

20 Am I right here that all of these figures
21 that your Ministry is constantly putting out about
22 tourism have to do with people who travel more than 40
23 miles?

24 A. I don't believe our Ministry is
25 constantly putting out figures about tourism. The

1 40-mile definition applies though.

2 Q. Let me suggest to you that if an
3 Indian comes in and asks for an increase in his quota
4 on his commercial fishing licence he is told: But
5 don't you have any idea of how many millions of dollars
6 we make from tourism and, therefore, we can't let you
7 catch a single additional fish?

8 A. I am not aware of that being said a
9 great deal. What I am aware of is, in some districts,
10 the Ministry has tried to encourage the use of the
11 commercial fish, if you will, allotment. Perhaps that
12 there might be more benefits to the Band if those same
13 fish were used to support a major lodge.

14 Q. Or to support the lodge owned by the
15 good old boy who is the buddy of the district manager?

16 A. I am not aware of a situation like
17 that, sir. I don't know who the good old boy is.

18 Q. Maybe you will be hearing about some
19 situations like that. Now, you did say that it is
20 difficult to get tourism facts and figures and
21 statistics?

22 A. Yes.

23 Q. Why is that?

24 A. I believe I explained it in my
25 evidence that it is -- there aren't a lot of surveys

1 done, particularly the surveys done to get at the thing
2 I was attempting to get at which was just the hunting
3 and fishing lodge industry in northern Ontario.

4 If you start relying on Stats Canada
5 data, the number that relates to tourism is buried in
6 with a lot of other information that's in there. I
7 believe I covered this in my evidence.

8 Q. Okay. Well, let's just take the data
9 that you show beginning on page 111 and continuing on
10 page 112. That's one full paragraph.

11 Do I read this correctly as saying that
12 one source that you quote, this is the 1979 study
13 updated to 1986 dollars, says for the hunting and
14 fishing lodge industry direct expenditure \$120-million.

15 A. That's the quote.

16 Q. Okay. Another one of your sources, a
17 1986 NOTOA white paper for the fishing and hunting camp
18 sector, direct expenditures, \$300-million. That's in
19 the same paragraph.

20 A. That's correct. Those were put in
21 the same paragraph on purpose to illustrate the point
22 that it is difficult to get a consistent answer to the
23 same question is: How much is that industry worth.

24 Q. The lower is 40 per cent of the
25 higher?

1 A. I can't explain the difference.
2 There may be a different database. I don't know based
3 on what -- the NOTOA white paper was based on. I am
4 not aware of a separate survey, but they might have had
5 one.

6 Q. Am I correct, as well, sir, that you
7 have two estimates from two different sources as to the
8 number of persons employed directly or indirectly in
9 northern Ontario tourism; that one figure is 43,000 and
10 the other figure is 28,100?

11 A. I believe in the preparation of
12 interrogatories another source came to our attention,
13 again, through the Ministry of Tourism and Recreation
14 and the number was different.

15 Q. Oh, it was different again. What was
16 the third number?

17 A. No, the 28,000 one I believe was
18 derived from a 1985 study by Econometric Research that
19 was done for the MTR, Ministry of Tourism and
20 Recreation.

21 Q. Okay.

22 A. Whereas the 43,000, if my
23 recollection is correct, is a reference from the
24 Ministry of Northern Development and Mines.

25 Q. Do you agree with me, sir, that

1 arithmetically 28,100 is less than two-thirds of
2 43,000?

3 A. Yes.

4 Q. Do you have any explanation of that
5 range, and we are talking here about numbers of
6 employed people?

7 A. The Econometric study that was done
8 in '85 has a section in it - and I would have to make
9 reference to it - but generally they were dealing with
10 a period of time that was during and after the
11 recession in the early 1980s and there is some reason
12 to believe that even if the two figures did have the
13 same statistical base, that perhaps that industry
14 contracted during those times.

15 I don't think that's a full explanation,
16 but the report attempted to try and deal with it.

17 Q. Now, if I am not mistaken,
18 generally - and I am looking at page 110 of your
19 written materials - about two-thirds of so-called
20 tourism expenditures are by Ontario residents?

21 A. Five out of 8-billion, yes.

22 Q. So when you refer to gross figures in
23 terms of tourist expenditures, do you agree that
24 two-thirds is a fair rule of thumb in terms of those
25 who are Ontario residents spending money as opposed to

1 who are non-Ontario residents spending money on
2 tourism?

3 A. I think I would feel better if you
4 use five-eighths.

5 Q. Well, arithmetically you think it
6 should be five-eighths. You think that five-eighths is
7 closer to reflecting the value of 5.1-billion as a per
8 cent in Figure 30 against the total?

9 A. And I understand the total to be
10 8-billion.

11 Q. Well, I am not going to try to do the
12 arithmetic here, sir. But given your answer, do you
13 think that is what most people understand when they
14 hear about tourism expenditure, they think that we are
15 talking about two-thirds of it being made by people
16 from within the province?

17 A. No, I think the understanding -- I
18 know from my experience, for instance, in meetings in
19 communities in northern Ontario generally that the
20 image there is tourists being from elsewhere, not our
21 own residents.

22 Q. So if one was going to adopt that
23 image, one would have to divide the dollar figures by
24 three, just roughly speaking?

25 A. Could you repeat your question?

1 Q. If one were to adopt that image as
2 accurately reflecting what tourism is, as opposed to
3 some other reflection of it, then one would divide any
4 dollars quoted for tourism expenditure by three?

5 A. But it would be wrong to make that
6 assumption and it also varies across the province.

7 Q. Oh, okay, fine. Do you think that
8 because an Indian travels from Lac la Croix to Fort
9 Frances and stays he becomes a tourist? Because an
10 Indian travels from Moosonee to Toronto to meet with an
11 MNR official, is he a tourist?

12 A. I believe he is probably considered a
13 visitor, as I am here today.

14 Q. Exactly. Your expenditure being here
15 today is going to show up as dollars under somebody's
16 definition of tourism, right? You have seen the stats.

17 A. Yes.

18 Q. Now, it may not show up under
19 somebody else's definition, I agree, but is that one of
20 the reasons why we have these vast ranges of estimates?

21 A. The whole purpose of my evidence
22 package on tourism was to try and get from the large
23 figure, that included everything if you will, down
24 to -- progressively down to the smaller figure that
25 reflected, as accurately as we could, the expenditures

1 from those people that would be tourists, guests of the
2 hunting and fishing lodge industry in northern Ontario.

3 Q. Okay. But at page 116 of your
4 prepared evidence, the first sentence on that page
5 reads:

6 "The majority of these people would be
7 classed as tourists."

8 Now, that includes things like
9 7.5-million people who visited a provincial park. Does
10 that mean that if I drive from here to Sibley Park and
11 stay overnight that I am one of the ones who should be
12 classed as a tourist?

13 A. That is the definition.

14 Q. If I go fishing - we have, let's see,
15 3-million people fishing - that makes me a tourist
16 again?

17 A. Sir, I am not defending the
18 definitions that exist. I am merely using somebody
19 else's information. Maybe that question could be
20 better responded to by somebody from Ministry of
21 Tourism and Recreation. I don't know the logic of why
22 they have the definitions they do.

23 Q. Well, sir, do you agree that resource
24 allocation decisions are made by your Ministry on the
25 basis of factors including how much money will be

1 generated for the benefit of the "people of Ontario"
2 from the tourist industry?

3 A. Including that, yes, I would agree
4 with that.

5 Q. So, the question of whether the
6 tourist industry and the dollars generated by it are
7 accurate to any degree, certainly has to do with what
8 we are talking about here, has to do with your
9 allocation decisions?

10 A. To some extent but, again, I just
11 caution you that isn't the only thing we take into
12 consideration.

13 Q. Oh, I am sure it isn't, but it is one
14 of them; is it not?

15 A. That's correct.

16 Q. Now, if the Ministry of Tourism or
17 somebody has a wrong definition of tourism in terms of
18 resource allocation, or if you think as a manager and
19 official of the Ministry that it is misleading and
20 doesn't fit into the type of work you do, how can you
21 really define it?

22 Why do you just accept that anybody from
23 Thunder Bay who goes fishing down the road is a
24 tourist?

25 A. Sir, I believe you have to look at

1 the numbers used in the context of this report to give
2 an overview of something for the Province of Ontario.
3 On a day-to-day basis where I was dealing with a
4 conflict or an allocation issue, say between the timber
5 industry and the commercial tourism industry, in
6 effect, I wouldn't be using those numbers at all.

7 I would be trying to get at numbers to do
8 with the cost of mitigating whatever the impact was on
9 that tourist operation, I would be trying to get
10 numbers or use numbers that were related to the value
11 of a particular camp. I wouldn't be using \$800-million
12 or \$8-billion.

13 I might add, that on a local basis the
14 numbers are still very difficult to get, but...

15 Q. Well, do you agree or disagree that
16 Indians have been refused fishing licences and have
17 been refused quota changes on the basis of the
18 Ministry's, or at least local officials of the
19 Ministry's opinions as to the benefit to the economy of
20 having the fish available for tourists as opposed to
21 the benefit to the economy of having the same fish
22 available for these Indian fishermen.

23 Do you agree with that evidence?

24 A. Again I find your question a little
25 broad to answer in a yes or no sense. I wouldn't know

1 how to answer that.

2 There are a variety of factors that go
3 into making a decision about whether a commercial
4 tourism opportunity will be granted to a native or a
5 non-native or anybody else. In some cases, I would
6 just ask you to recognize there are some existing
7 commitments here, there are existing businesses around
8 that we have some obligations to support, I believe.

9 THE CHAIRMAN: Mr. Kenrick -- excuse me,
10 Mr. Colborne - Mr. Kenrick, is it your evidence that
11 the definition of tourism would be better served by
12 looking at out-of-Ontario tourists rather than relating
13 it to a mileage factor on resident Ontarians in terms
14 of ascertaining statistically the dollar amount spent
15 on tourism?

16 MR. KENRICK: I don't believe so. In
17 northwestern Ontario it is, to a very large extent,
18 some non-resident involvement there in tourism, so it
19 would be reflective if that type of decision was made.
20 But I think there is a lot of expenditure made in
21 northeastern Ontario that are made by tourists that are
22 residents who come from the Golden Horseshoe and
23 spend -- travel 400 miles farther north in Ontario and
24 I think it is important to try to capture that amount.

25 THE CHAIRMAN: But where decisions

1 concerning allocations of resources are made, would it
2 not make better sense to relate the tourist dollars
3 spent on the realities of that area in which those
4 decisions are being made?

5 In other words, in northwestern Ontario
6 you are dealing primarily with out-of-province
7 tourists. And would not the allocation of resource
8 decisions to be made in northwest Ontario be better
9 served using that kind of definition of tourism than,
10 say, southeastern Ontario or northeastern Ontario which
11 may rely, to a large extent, on resident populations in
12 the south vacationing in the north?

13 MR. KENRICK: Yes. The current
14 definition allows one to do that though, just the
15 expenditures that are generated in the northwest under
16 the current definition will be largely non-resident
17 expenditures.

18 THE CHAIRMAN: Except, if I am following
19 the evidence, it takes into account, to a large extent,
20 resident Ontarians that travel more than 40 miles?

21 MR. KENRICK: Correct, which wouldn't
22 be -- it is relative numbers but the numbers of Ontario
23 residents that go to northwestern Ontario is not as
24 large a percentage of Ontario residents that go, say,
25 to northeastern Ontario.

1 They are in there, they are just -- the
2 numbers wouldn't be as significant.

3 THE CHAIRMAN: Sorry, Mr. Colborne.

4 MR. MARTEL: Can I ask a question? How
5 do we define then tourism as it really means, because
6 you indicated that you are considered, for the purposes
7 of statistics, a tourist.

8 MR. KENRICK: A visitor.

9 MR. MARTEL: A visitor, pardon me, which
10 shows up though where in the income or the statistical
11 figures used as expenditure in the tourism field; is
12 that right?

13 MR. KENRICK: Correct.

14 MR. MARTEL: And is that -- I guess what
15 I am trying to find out is there any way of
16 categorizing those things that are really related to
17 tourism and those things that are related to any other
18 endeavour such as this hearing or other businessmen
19 coming here or anyone else who comes here - but it has
20 nothing to do with tourism - to get a better
21 perspective of what tourism is all about?

22 MR. KENRICK: I am not aware of another
23 source that will more clearly sort that difference out.
24 Again, I drew on documents that were the most recent
25 data that Ministry of Tourism and Recreation had at

1 their disposal and they have within those types of
2 problems with the data.

3 THE CHAIRMAN: I guess, following on with
4 Mr. Martel's question, does the Ministry of Natural
5 Resources adopt definitions used by other ministries to
6 their own purposes, or do they blindly accept
7 definitions used by other ministries in the course of
8 the same government and then apply other principles by
9 your Ministry such as allocation principles based on
10 that definition?

11 Can you not differentiate for your own
12 purposes, notwithstanding that another ministry used a
13 particular definition for their own purposes?

14 MR. KENRICK: Yes.

15 THE CHAIRMAN: It may be quite different.

16 MR. KENRICK: The only place I couldn't
17 do that is if I wanted to use their database, but for
18 decisions made by the Ministry of Natural Resources, I
19 would assume we can define tourist however the Ministry
20 wishes to define it, but we would have difficulty
21 getting some statistics.

22 THE CHAIRMAN: It can. The question is:
23 Do you?

24 MR. KENRICK: I am not sure. I would
25 think of a report this Ministry worked on, we tried to

1 define or deal with the topic of tourism revenue in the
2 province and I believe we used MTR's definition.

3 MR. MARTEL: Can you tell me then how you
4 can make an allocation of, let's say, a quota?

5 Let's say you have a commercial operation
6 and someone says: I need more fish in order for my
7 quota to make a profit. In other words, if I don't get
8 a larger quota I am going to go out of business. How
9 do you make the allocation on that; do you have that
10 process?

11 MR. KENRICK: Do you mean a commercial
12 fishing allocation?

13 MR. MARTEL: Yes.

14 MR. KENRICK: I am sure there is one I
15 haven't dealt extensively in areas that have commercial
16 fisheries, so I don't know the answer to that one, but
17 I am sure there is a process.

18 And we got again requests - and I will
19 draw on Moosonee - for an allocation of fish, and
20 generally the request would come in with a number in
21 it: We would like 200,000 pounds of it. We use
22 productivity figures to determine what the allowable
23 harvest would be out of that area and that would help
24 determine the size of the -- that would be the basis
25 for the size of the allocation, keeping in mind how

1 much of it was unallocated right now.

2 That would be the scientific basis of it.

3 MR. COLBORNE: Q. Just one question,
4 sir, about roads. You say roads are dealt with on
5 their individual merits, that is at page 116 of your
6 evidence.

7 Now, my question is this: In the north,
8 isn't it true that the main criterion for establishing
9 roads is whether they are needed by pulp trucks or not;
10 no forest industry, no road?

11 They are not built for people to travel
12 on, they are built for the industrialized portion of
13 the forest industry so they can transport their product
14 or their raw material.

15 MR. KENRICK: A. The majority of the
16 roads that I addressed in my report are built to meet
17 the needs of the forest industry, that's correct.

18 Q. So you have instances like Lac la
19 Croix an Indian reserve with over 200 people, maybe
20 over 300 - I am not sure, I don't even want to suggest
21 the population to you - no road. Fair number of
22 people, but the forest industry doesn't want a road,
23 doesn't need a road yet, it is close, but when it gets
24 closer the people will get a road.

25 Is that the way it works?

1 A. No, there are other avenues and
2 sources of funds for building roads and highways in
3 this province.

4 Q. Give me some examples, I am talking
5 about the north.

6 A. Northern Ontario Resource
7 Transportation Committee which I believe operates under
8 the Ministry of Northern Development and Mines is a
9 source of funding for...

10 Q. For roads to mines, right?

11 A. No, excuse me, sir. We, again in
12 Moosonee, built the winter roads up to the communities
13 in the Hudson and James Bay coast from that source of
14 funding and I believe the ones in northwestern Ontario
15 are also funded from the same pot.

16 Q. Which ones in northwestern Ontario?

17 A. The winter roads north of the
18 provincial -- north of Pickle Lake.

19 Q. I see. Any others?

20 A. I don't have it in front of me.
21 There are a host of road funding sources: Ministry --
22 MTC, Ministry of Northern Development and Mines, and
23 some sources from the Ministry of Natural Resources.

24 Q. A question or two, sir, about
25 angling. On reading your written evidence beginning at

1 page 117, I see at the end of the third paragraph there
2 a single footnote; that is, footnote No. 50 which
3 refers me to a document and I will just read your
4 footnote 50:

5 "Canada Department of Fisheries and
6 Oceans Analysis Directorate
7 and OMNR Fisheries Branch support fishing
8 in Ontario, 1985; Ottawa Fisheries and
9 Oceans 1988, 12-pages."

10 A. That's correct.

11 Q. Now, your evidence in this regard
12 begins, as I said, at page 117 and I don't see another
13 footnote right through to page 122 under hunting. So
14 my question is this: Is everything under your heading
15 Anglers from that one 12-page report?

16 A. That's correct. All the statistical
17 information came out of the report that I quoted.

18 Q. Now, are you familiar with that
19 report?

20 A. Mm-hmm.

21 Q. Do you have it before you?

22 A. I might just mention by way of
23 qualifying that between the time this evidence was -- I
24 started to write it and the time I finished writing it,
25 the publication was formally published, so some of the

1 references, although the data doesn't change, came from
2 the preliminary version of the same thing. That is
3 basically the source, though.

4 Q. Tell me where the authors of that
5 12-page report got their data?

6 A. A questionnaire survey of Ontario
7 residents. If you look at that source, the
8 introduction and survey background speak to the method.

9 Q. Do you have it before you?

10 A. Yes, I do.

11 Q. Well, I don't. Could you read what
12 it says there?

13 A. "A survey on sport fishing in
14 Ontario, 1985 was carried out to gather
15 basic information on the nature and..."

16 MR. FREIDIN: Hold on. The reporter has
17 to take it down.

18 MR. KENRICK: My apologies. I will start
19 again. "Introduction...." Just give me a moment, I
20 will go through it and see if I can paraphrase it, if
21 that is --

22 MR. COLBORNE: Q. Yes, sir. All I want
23 to know is what is there in there telling us the degree
24 of reliability of this data, what method was used to
25 collect it and who got it and has it been vetted by

1 anybody in the professional community?

2 MR. KENRICK: A. Perhaps I can read you
3 them. I see a paragraph here that may help answer
4 that.

5 Q. Please.

6 A. 60 per cent, 8,300 of the
7 questionnaires sent to residents who had fished and to
8 non-residents who had purchased angling licences in
9 Ontario, 1985 were completed and returned to provide
10 the basis for the information given in this report.

11 Q. So the information in the report and
12 the statistical summaries that are concentrated there
13 are from a survey?

14 A. Correct.

15 Q. Is that a mail survey?

16 A. I believe so, and it is part of --
17 the 1985 survey was a third in a series carried out in
18 five-year intervals and it is done for all the
19 provinces I believe.

20 Q. And do you know if there is data in
21 there from the earlier surveys, or if the data is
22 simply from the most recent one?

23 A. This one I believe is just for 1985,
24 but I recall seeing another publication with I believe
25 1980 or '81 written on it. There was one previous that

1 I am aware of. I don't know how many times that
2 sequence has happened in Ontario.

3 Q. Is there anything in there telling us
4 that these people who responded to this mail survey
5 were not telling fish stories?

6 In other words, was there any checking on
7 a certain proportion of them just to see if the data
8 being returned was correct?

9 A. I don't believe so, but I have to
10 believe that the people, professionals that put that
11 survey together did not want to waste their efforts.

12 Q. Well, they were not seeking to have
13 this published in a refereed, professional or academic
14 journal were they, they were just working for the
15 government, they had to produce some data, it didn't
16 have to be tested before it would be used; right?

17 A. It wasn't going to be criticized by
18 outside people.

19 Q. There are no outside people whose job
20 it is to criticize the internal work of your Ministry;
21 are there?

22 A. No, but I am not sure that the only
23 reason one does a good job is fear of being tested. I
24 would have to assume these people had some integrity
25 and didn't want to waste a lot of taxpayers' money

1 doing a study that wasn't valid.

2 Q. Well, isn't it true, however, that
3 the only way that one can know with confidence that any
4 study of that type is reliable is if it is subject to
5 criticism or comment by professional peers?

6 I don't suggest that every bit of work
7 done otherwise is unreliable, I suggest that some of it
8 must be and we have no way of telling which is
9 unreliable and which is reliable unless there is some
10 independent examination of that, of the results of the
11 work?

12 THE CHAIRMAN: But, Mr. Colborne, with
13 respect, what kind of independent examination is there?

14 I mean, surveys are taken across the
15 province on a number of different fields by asking
16 people to respond to certain questions and if the
17 methodology of asking them to respond and they do
18 respond -- I mean, apart from doing some kind of
19 independent check on each of their responses, how do
20 you ever get any validity into any statistical surveys
21 to the extent that you are suggesting?

22 MR. COLBORNE: I think that is my point,
23 Mr. Chairman. We have no system - and I am not
24 necessarily suggesting there should be one for double
25 checking everything that gets done by government as it

1 is done - but I submit that you will be hearing
2 evidence from people who will say that there has been
3 an utterly abominable job done by this Ministry in
4 gathering angling specifics, in making fish allocations
5 and making decisions with respect to forestry that have
6 destroyed and damaged fisheries over years and years
7 and years.

8 And so you are going to be faced with, on
9 one hand, people who are employed by the industry
10 saying: Here are the statistics, we do it all the time
11 we know; and on the other hand you are going to have
12 independent people who don't have a chance to review
13 every little thing but the long-term trend is that you
14 made a mess of it.

15 So, I submit it is valid to at least --

16 THE CHAIRMAN: But are these same people
17 going to also suggest how it should have been done?

18 MR. COLBORNE: I don't know.

19 THE CHAIRMAN: Or are they just going to
20 suggest that it wasn't done well, better be done better
21 and we have no idea how, given resources that
22 ministries and governments are faced with and given the
23 answers that will come from the public in terms of a
24 broadly based public survey?

25 MR. COLBORNE: I have no particular

1 comment on that, Mr. Chairman. Your point is quite
2 valid. What can I say?

3 Government conducts its business and I am
4 not standing here saying that it does so fraudulently.
5 I will be calling evidence, I believe.

6 THE CHAIRMAN: Well, I guess what is
7 helpful to the Board in trying to ascertain its role in
8 this process at the end of the day, if it determines
9 that some of the practices in effect today are
10 inadequate, something else should be done.

11 MR. COLBORNE: Well, maybe, Mr.
12 Chairman...

13 THE CHAIRMAN: There has to be some
14 indication from some of the evidence before us as to
15 how something else should be done.

16 MR. COLBORNE: Yes, yes.

17 THE CHAIRMAN: Otherwise we are just
18 guessing like the next person until you go through 40
19 years of experience and maybe determine at the end of
20 it whether it is good or bad.

21 MR. COLBORNE: Maybe, Mr. Chairman, you
22 detected one of my themes and that is that there should
23 be some way of checking as it goes along. You can't
24 check everything, but something should be checked.

25 I suggest that one of the themes that I

1 am pursuing, whether it will be borne out or not, is
2 that I thought the public would be better served if
3 there was some independent means of checking these
4 things.

5 THE CHAIRMAN: I mean, we are all
6 dealing -- as Mr. Martel points out, we are all dealing
7 in the broad sense with the question of monitoring, but
8 that is just a generic term and it really I think
9 behooves us all to get behind the term monitoring as to
10 the nuts and bolts of how and what system can be put in
11 place that will make the results more reliable.

12 MR. COLBORNE: Your point is well taken,
13 Mr. Chairman.

14 Q. Just one question about hunting, sir.
15 If I understand your evidence at page 126 when you
16 speak of hunters spending money: \$88 of every \$100,
17 what you are referring to is money being spent by an
18 Ontario resident and \$12 of every \$100 is money being
19 spent by a non-resident doing an activity of hunting?

20 MR. KENRICK: A. That's correct, 88 per
21 cent of the expenditures is resident.

22 Q. At page 132, sir, of your evidence at
23 the bottom there appears a paragraph summarizing data
24 which appears on the next page as Figure 42, Provincial
25 Park Visitor Expenditures.

1 A. Right.

2 Q. Now, the data in Figure 42, as
3 summarized at the bottom of page 132, is all on the
4 basis of personal communication from a Mr. D. Driscoll;
5 is that correct?

6 A. Correct. I might just mention that
7 in response to an interrogatory in terms of what the
8 sources were for what Mr. Driscoll's sources were, I
9 believe if you look at Question 23, the Forests for
10 Tomorrow group, you will see the response there.

11 Q. Well, you give me that response, it
12 is not my interrogatory.

13 MR. FREIDIN: Perhaps Mr. Kenrick can
14 read the question and read the answer, it is not very
15 long.

16 MR. KENRICK: "What is the source of
17 information relied on by D. Driscoll?
18 Please provide copies.

19 Answer: Figures were based on an
20 expenditure model developed by
21 Econometrics Research Limited. Dr. A
22 Kabursy in 1981 for the branch entitled:
23 Economic Impact of Provincial Parks In
24 Ontario, Summary Report. The model uses
25 actual user data from each provincial

1 park based on park permit information."

2 I understand that is annually.

3 "The expenditure data is arrived from a
4 survey taken in each park every second
5 year."

6 MR. COLBORNE: Q. And I gather that
7 document is not published but it is available; is that
8 right?

9 MR. KENRICK: A. I believe so. You are
10 referring to the Kabursy, the report entitled:
11 Economic Impact of Provincial Parks in Ontario, Summary
12 Report?

13 Q. Yes.

14 A. I believe it is available.

15 Q. Now, the next page is 134 of your
16 written evidence. Figure 43 gives the number of camper
17 nights for 1987 in a number of provincial parks, and
18 for Quetico Wilderness Park the figure is 114,000.

19 My question, sir, is: What percentage of
20 those are resident and what are non-resident; do you
21 have that information?

22 A. I don't have that information.

23 MR. COLBORNE: Perhaps I will ask Mr.
24 Freidin if he would undertake to provide that
25 information, if it is available?

1 MR. FREIDIN: I will attempt to get an
2 estimate for Mr. Colborne.

3 THE CHAIRMAN: Thank you.

4 MR. COLBORNE: Well, does that include
5 that Mr. Freidin will get the actual figures if they
6 are there?

7 MR. FREIDIN: Yes, that does.

8 MR. COLBORNE: Thank you.

9 Q. Mr. Kenrick, orally but not in your
10 written material, you refer to the fact that MNR staff,
11 due to the fact that they are often assigned to smaller
12 communities, are frequently members of groups such as
13 game and fish clubs and, in fact, in many cases are
14 founding members; is that correct?

15 MR. KENRICK: A. That's correct, they
16 generally are involved in the communities they live in,
17 not limited to that one group though.

18 Q. And my question is, sir: Do you know
19 of cases where conservation officers in the employ of
20 your Ministry have "deputized" fellow members of game
21 and fish clubs to assist them in enforcement
22 activities?

23 A. I couldn't respond to the fellow
24 members portion of that. I believe there are deputy
25 conservation officers that have been deputized that are

1 members of game and fish clubs. .

2 Q. These are not employees of your
3 Ministry, or are they?

4 A. Generally they are not DCOs but some
5 are. We have people that work for other services that
6 have taken deputy conservation officer training and in
7 perhaps either off season in their regular job or peak
8 periods where there is a staffing need in fish and
9 wildlife those people are used as DCOs.

10 Q. Okay. Let's just talk for the moment
11 about those deputy conservation officers who are not in
12 the full-time employ of your Ministry. Are they paid
13 for their services?

14 A. I don't know the details of the DCO
15 program. I am not sure how far you want to go into
16 this.

17 Q. Well, are you able or unable to
18 answer my question?

19 A. I am unable to answer it.

20 MR. COLBORNE: Mr. Freidin, will you give
21 me an undertaking to answer that question of whether
22 these deputy conservation officers who are not
23 otherwise employed by the Ministry are paid or not?

24 MR. FREIDIN: Sure.

25 MR. COLBORNE: Q. Would you agree with

1 me, sir, that local game and fish clubs in at least
2 northwestern Ontario -- perhaps I will add northeastern
3 Ontario because that is your area of greatest
4 experience - are mainly non-native organizations?

5 MR. KENRICK: A. The majority of the
6 members in my experience are non-natives, that's
7 correct.

8 THE CHAIRMAN: Mr. Colborne, can I
9 inquire at this time how long you intend to be so that
10 we can adjust the program for this afternoon?

11 MR. COLBORNE: Yes, Mr. Chairman. I was
12 really just getting to the end of my questions of this
13 witness.

14 However, I was going to do a little
15 checking and ask him a few more questions tomorrow, but
16 that would just be housecleaning matters and so within
17 ten minutes I was going to be ready to continue with
18 Mr. Crystal or adjourn.

19 THE CHAIRMAN: And how long would you be
20 with Mr. Crystal?

21 MR. COLBORNE: I think a little less time
22 than Mr. Kenrick. Mr. Crystal and I, despite what may
23 be the impression that may have been given, are
24 generally in agreement about a lot of things.

25 THE CHAIRMAN: All right. I think based

1 on our discussion at the commencement of the
2 proceeding today -- Mr. Reilly, how long do you think
3 you will be?

4 MR. REILLY: I would suggest perhaps
5 three hours.

6 THE CHAIRMAN: So that it would be
7 reasonable to conclude with both you, Mr. Colborne, and
8 Mr. Reilly tomorrow?

9 MR. COLBORNE: If it is a full day, yes.

10 THE CHAIRMAN: A full day of hearing and
11 that would leave some portion of Friday to commence
12 with you, Mr. Campbell. You will be ready?

13 MR. CAMPBELL: Well, Mr. Castrilli would
14 proceed me.

15 THE CHAIRMAN: Sorry, Mr. Castrilli. And
16 do we have any indication from anybody from him as to
17 how long he might be.

18 MR. CAMPBELL: My recollection was a day
19 or less.

20 THE CHAIRMAN: A day or less. So he
21 would probably certainly take up Friday or most of
22 Friday, in any event.

23 MR. CAMPBELL: That may well be, Mr.
24 Chairman.

25 MR. FREIDIN: Unless we take up part of

1 the day clarifying the Board's order.

2 THE CHAIRMAN: Well, we certainly hope we
3 will not be taking up much more than a very short time.

4 MR. FREIDIN: I hope so too.

5 THE CHAIRMAN: And then -- sorry, Mr.
6 Colborne, but we just want to see where we are going to
7 go so it will determine where we end today.

8 So then, the following week the Board
9 will not be sitting, but the week of the 26th we still
10 have Mr. Reilly -- sorry, Mr. Campbell, Mr. Hunter, Mr.
11 Edwards, and Mr. Freidin in reply and we are suggesting
12 it is that session, the Monday through the Thursday.

13 MR. FREIDIN: Mr. Hunter has given me
14 estimates up to two days.

15 MR. CAMPBELL: I will be two hours or
16 less.

17 MR. FREIDIN: That takes us...

18 THE CHAIRMAN: It is going to be tight.

19 MR. FREIDIN: It is going to be tight.

20 If you try and decide whether we should break and keep
21 going tonight, subject to what the Board's feelings are
22 in terms of having sat as long as we sat today and the
23 witnesses, of course, I would suggest that we keep
24 going.

25 THE CHAIRMAN: I think we will finish off

1 with Mr. Kenrick, if you are only going to be another
2 ten minutes or so, then we will take a short break and
3 maybe come back for another perhaps three quarters of
4 an hour, if that is acceptable.

5 We do want to finish this panel off as
6 everyone is aware during the week of the 26th. We do
7 not want to carry over this panel beyond the October
8 break.

9 So, if you proceed on that basis, we will
10 continue at this time and finish off Mr. Kenrick and
11 then take a break before you start with Mr. Crystal.

12 MR. COLBORNE: May I just request, Mr.
13 Chairman, that that be changed very, very slightly so
14 we can take our break now so I can make some phone
15 calls before five o'clock.

16 THE CHAIRMAN: Very well. We will break
17 until five o'clock.

18 ---Recess taken at 4:45 p.m.

19 ---Upon resuming at 5:00 p.m.

20 THE CHAIRMAN: Thank you. Be seated,
21 please.

22 Mr. Colborne?

23 MR. COLBORNE: Q. Mr. Kenrick, you gave
24 some evidence about discussions with Indians about
25 timber management adjacent to reserve lands and I have

1 been sitting here trying to find the reference and I
2 think there is one in your written materials.

3 I haven't managed to find that, but I
4 will read you a sentence from the transcript just so
5 you know what topic I am addressing. I am reading from
6 page 7450 for September 7th, towards the bottom of the
7 page. You were recorded there as saying:

8 "Frequently these items include local
9 fishing, hunting and trapping matters and
10 do include matters such as timber
11 management adjacent to reserve lands."

12 Now, my question is, sir: Could you give
13 me an example or examples that you know of where timber
14 management adjacent to reserve lands is in discussion
15 with Indian bands?

16 MR. KENRICK: A. I believe that what you
17 are referring to there is a reference back to page 86.
18 I am aware, and this is based on, if you will, a
19 mini-telephone survey I did to some of my counter-parts
20 in the north, the Otto Kilkenney operating blocks in
21 the Nipigon Crown management unit. There has been
22 discussions with natives from Nipigon and Beardmore.

23 I understand there are current - and this
24 is second-hand information - but there is currently
25 negotiations with the Lac Seul Band about allocations

1 on the Sioux Lookout Crown management unit. Those
2 would be two illustrations.

3 Q. Somewhere in your material, sir, and
4 I apologize I cannot put my finger on it, you are
5 referring to -- or at least the oral evidence referred
6 to reserving or perhaps setting aside land in the
7 vicinity of Indian reserves for the use of the Indians
8 who lived on those reserves.

9 And if it will assist your recollection,
10 I think that you were wondering why the term reserve
11 was used. Do you recall that from last week, because I
12 cannot refer you to a page. I apologize, this is
13 something that I was looking for during the break and I
14 can't find it, but do you remember that exchange?

15 A. I remember the exchange about holding
16 unalienated Crown resources adjacent to reserves, yes.

17 Q. Exactly. My question is this: Can
18 you refer me to a single map produced by your Ministry
19 where it shows on it - and I am not talking about
20 somebody's notations - but it says something to the
21 effect, anything to the effect reserved for use of the
22 Indians who live on the adjacent reserve or anything
23 like that?

24 A. No, I cannot.

25 Q. Sir, just a question or two about

1 planning. You have been involved very extensively in
2 planning and had a lot to do with some of the plans
3 that were referred to here. And there was evidence
4 that there was not much Indian or native participation
5 in the planning process leading to the District Land
6 Use Guidelines and so on.

7 The specific evidence I am referring to
8 is the data that appears in each of several land use
9 guidelines that are filed as exhibits showing in some
10 cases one, in some cases two, and so on native
11 individuals or organizations participating in the
12 process.

13 Now, I guess my first question is: Do
14 you agree that in your experience of developing
15 District Land Use Guidelines there has not been much
16 native input?

17 A. I would have liked to have seen more
18 and I guess my response to that would be it isn't for
19 lack of trying. I think during -- I believe Panel 1
20 addressed this to some extent.

21 Q. Okay. Let's assume that some of that
22 lack of participation had to do with perhaps language
23 barrier, let's assume that some of it had to do with
24 perhaps lack of resources to travel to meetings, let's
25 assume that some of it had to do perhaps with lack of

1 notice of meetings or open houses or whatever.

2 I am just saying, let's assume some of
3 the obvious things that would come to anybody's mind,
4 are there other points that you think are the cause of
5 the lack of native input into the process that led and,
6 I take it, may continue to lead to the creation of land
7 use guidelines?

8 A. I can recall during the development
9 of the Strategic Land Use Plan, that in response to a
10 request - and I could be wrong - but I believe the
11 request was to the Nishnawbe-Aski group asking them to
12 participate in it and the response that we got back was
13 no.

14 And, as I understood the response to be,
15 that to participate in that process was acknowledging
16 that the Crown had the right to manage the resources,
17 so they refused to participate. That's another thing
18 that was going on at that time and I think had a
19 bearing on how much participation we got.

20 Q. Would another way of putting that be
21 that that organization was saying that you don't own
22 this land, so what business do you have planning what
23 happens on it?

24 A. That would be a fairly rough way of
25 wording it. I might also mention it is also why from

1 my personal experience I found it, again, this is
2 personally more productive to be dealing with local
3 bands in searching out solutions to local problems.

4 Q. Oh, exactly. Don't you think that
5 the Ministry at all levels prefers to deal with --
6 well, best is individual Indians; no, even better than
7 that is good Indians; a little worse than that is
8 Indian bands, but the very worst of all is Indian
9 organizations that have some expertise and resources;
10 don't you agree with that?

11 A. No. Again, being pragmatic --and I
12 guess it was my position when I was in Moosonee - I
13 will deal with groups and/or individuals. What I am
14 after is a solution to a problem and if I can work on
15 that solution and get dialogue going with the groups
16 that are close, if you will, the Mushkegowuk Council
17 for one, then I find it more effective to be dealing
18 there.

19 Q. Do you think that you are perceived
20 as a representative of a colonizing force by Indians?
21 The record can show that the witness is grinning.

22 A. I believe that --

23 THE CHAIRMAN: Well, you are referring to
24 MNR as opposed to this particular witness; are you?

25 MR. COLBORNE: I think I said a

1 representative, yes.

2 MR. KENRICK: I can recall one instance
3 where that phrase has been mentioned to me.

4 MR. COLBORNE: Q. Sir, is it humorous to
5 you because it occurs everywhere in the world except
6 Ontario?

7 MR. KENRICK: A. No.

8 Q. Do you think that what's happening
9 here is any different from the highland clearances? Do
10 you think that what is happening here is any different
11 from the Amazon jungle?

12 Do you think that what is happening here
13 is any different from what happened in the Carribean or
14 South America or anywhere else where Europeans moved
15 into areas previously occupied by aboriginal people?
16 Is there something special about Ontario?

17 A. I don't think I am qualified to
18 answer that. I am not familiar with those other
19 situations.

20 Q. You use the word local and
21 traditional users quite frequently, and I think you
22 expanded to say that local and traditional users means
23 everybody who actually lives in a particular small
24 geographic area. Would that be a fair way to put it?

25 In other words, it is not just Indians or

1 just non-Indians, for instance, it is everybody?

2 A. I am not sure I would say small
3 geographical area. When I went to Moosonee it happened
4 to amount to 22 per cent of the province but it was
5 generally referring to the 5,000 people that lived
6 within the district.

7 Q. Okay. But that phrase refers to
8 natives and non-natives collectively?

9 A. That's correct.

10 Q. In all cases, right?

11 A. That's correct.

12 Q. Now, I want to ask you if -- let's
13 take the example of a town like Dryden. Do you think
14 that the non-native population of Dryden has interests
15 insofar as natural resources are concerned identical
16 with the interests of the Indians living on reserves in
17 the vicinity of that town?

18 A. It wouldn't surprise me if the two
19 groups thought about resources in a different vein.
20 Both groups I believe would have an interest in
21 resources, natural resources. They might be the same
22 interest or a different interest.

23 Q. Sir, would you agree that in a lot of
24 cases your Ministry uses numbers with respect to
25 species but you are not certain of those numbers just

1 because the sampling methods and so on aren't totally
2 reliable or whatever, but that the numbers aren't
3 exact?

4 I think you have -- well, let me just
5 leave the question there.

6 A. I would agree that in some surveys
7 the number is not exact; in other surveys, a head count
8 of some type, it is exact. I think the level of
9 accuracy has got a lot to do with how you are going to
10 use the information.

11 Q. Okay. Isn't it true though that -- I
12 will just give you four categories: elk, caribou,
13 black bear, small game. Your data on population in
14 each of those four areas is not dead accurate?

15 A. My understanding is that's correct,
16 but it is also my understanding that for some of those
17 I believe Panel 7 will talk about statistical methods
18 and the accuracy of our data, but it is close enough
19 for the types of management decisions we are making
20 with it.

21 Q. Okay. The question I wanted to ask
22 you is: Do you know of any examples where, for
23 purposes of assembling the data on which your Ministry
24 makes decisions, Indians from the traditional cultural
25 community are asked?

1 A. Most certainly. All of the
2 background information that was collected for the
3 Moosonee District Land Use Guideline exercise was based
4 on a survey in the communities undertaken by native
5 people on native people, very specifically to get at
6 their use of their resource.

7 Q. Right. Now, are you familiar enough
8 with the procedure for gathering that information as
9 you move south from Moosonee to tell me if there is any
10 change in that?

11 A. I don't believe that method of -- or
12 that extensive a survey was used elsewhere in the
13 province. I think that's fair to say.

14 I am not familiar -- you said moving
15 south. There was information collected as part of the
16 West Patricia planning exercise. I am not familiar
17 with the details of it, though.

18 Q. Generally, do you think it is a good
19 idea to ask the native members of traditional
20 communities - and I am phrasing it that way to
21 distinguish them from, for instance, a member of your
22 Ministry who carries out scientific work who also
23 happens to be a native - I am asking about going into
24 the traditional communities to ask about their
25 knowledge of population, animals and so on, population

1 trends and numbers.

2 Do you think it is a good idea to do
3 that?

4 A. Generally, but those things don't
5 come -- I guess as a manager, don't come at no cost.
6 Those types of surveys, at least in the Moosonee case,
7 was an expensive one to undertake, and I think I would
8 want to make that decision based on, for instance, the
9 percentage of the total use of the resource that is
10 taken up by a local community.

11 If I might put it in a non-Moosonee
12 context: If I was trying to find out about fisheries
13 use and we were talking about millions of pounds of
14 fish and it was -- the native portion of that was 1 per
15 cent, a small portion, say a native community adjacent
16 to Metropolitan Toronto, depending on the nature, the
17 type of decision I wanted to make it with it, I might
18 not invest in that type of a survey.

19 Q. I don't think my question was
20 sufficiently clear. Let me try to rephrase it and
21 simplify it. Do you think that members of traditional
22 native communities are reliable sources of information
23 on questions such as animal populations and population
24 trends?

25 A. I could think of illustrations, sure,

1 where the trends or observations that were expressed by
2 native communities I believe were accurate, and I can
3 think of some to do with water fowl where any of the
4 statistical information that we could compare that
5 information to would show it not to be accurate.

6 Q. Just so I know that you are answering
7 the question as I conceived it, expand on the example
8 that you just referred to where you thought the data
9 was not accurate. Give me the exact instance, please?

10 A. I can think of letters that we
11 received or discussions we had with elders in a single
12 community, say, up the Hudson Bay coast. The
13 observation was that the snow goose numbers were way
14 down, but our surveys and surveys of the spring flights
15 and the nesting sites would suggest it was one of the
16 better years in recent history.

17 That may well be that the water fowl in
18 that case didn't set down near that local community, in
19 which case the observation was probably right but
20 locally there appeared to be an absence of water fowl.
21 But nationally, the flocks were -- the populations were
22 as healthy and as large as they had been in recent
23 history. I think it is just a matter of a different
24 perspective, that's all.

25 Q. Now, Mr. Kenrick, just one last

1 question for today. At page 141 of the written
2 evidence there is a short one-sentence paragraph in the
3 middle of the page which I will read to you and my
4 question is: What does this mean and would you expand
5 on it a little bit?

6 "The Class Environmental Assessment for
7 Timber Management recognizes the special
8 interests that natives generally have in
9 natural resource matters."

10 Where? How? It is just sort of left
11 hanging. Add something to that for me, please?

12 A. That is a reference to the text that
13 is shown on page 7 of Part I of the Environmental
14 Assessment Document.

15 Q. That's the two paragraphs that were
16 added to the final draft?

17 A. I believe so.

18 Q. And that's all you are referring to?

19 A. There are also references in terms of
20 native participation in the public consultation process
21 and those are found on pages 153, 156, 158, 161, 165
22 and 170.

23 Basically what they say is that for each
24 step in the timber management planning process notice
25 will always be given to band councils of each Indian

1 reserve in the forest management unit and any other
2 native community and organizations which are
3 potentially affected. All of those references are to
4 that.

5 Q. When did that start, what year?

6 A. I am not sure. I know pre-dating
7 this document there are illustrations where we have
8 consulted with local native communities. It wouldn't
9 surprise me that you could find an illustration where
10 we hadn't though.

11 Q. Now, Mr. Crystal --

12 MR. FREIDIN: Mr. Chairman, just before
13 we finish. I don't want Mr. Colborne to be misled.
14 The proponent, of course, is relying on the evidence of
15 this particular panel and the evidence of Mr. Crystal
16 as to Ontario government policy in relation to native
17 matters as he testifie and we will rely obviously on
18 documents which appear in the government review which
19 were written by the Ministry of Natural Resources
20 setting out -- which indicates positions or
21 understandings in relation to matters including the
22 matters related to native people.

23 MR. COLBORNE: Q. Mr. Crystal, first
24 just a few clarifying questions about your Curriculum
25 Vitae.

1 MR. CRYSTAL: A. Yes.

2 Q. You are the Co-ordinator of Native
3 Issues -- perhaps I should get the exact title.
4 Co-ordinator, Native Issues for the Ministry of Natural
5 Resources?

6 A. I think the title Co-ordinator,
7 Native Issues describes my position within the Ministry
8 of Natural Resources.

9 Q. Now, there was evidence earlier in
10 the hearing; that is, earlier than this panel,
11 concerning the fact that previously within the Ministry
12 there was something called the Office of Indian
13 Resource Policy?

14 A. Yes.

15 Q. And do I understand it correctly that
16 that particular branch or twig of government doesn't
17 exist by that name any longer?

18 A. That's correct.

19 Q. There was also at one point a
20 position that appeared in the administrative chart for
21 the Ministry called Special Negotiator, Native Issues?

22 A. Yes.

23 Q. Now, you in your career with the
24 Ministry have spent some time in each of those; that
25 is, some time in the Office of Indian Resource Policy?

1 A. No, that's not correct.

2 Q. Okay. Let's just begin with that,
3 then. You were never with the Office of Indian
4 Resource Policy?

5 A. I was a member of the Legal Services
6 Branch of the Ministry of Natural Resources and one of
7 my responsibilities at the Legal Services Branch was to
8 provide counsel to the Office of Indian Resource
9 Policy.

10 Q. Okay. And that continued until
11 January, 1977?

12 A. Yes.

13 Q. I am just reading from page 16, sir.

14 A. Okay.

15 Q. And it would be that month when you
16 ceased to be counsel doing that job and others and
17 became the Special Negotiator, native Issues?

18 A. Well, I should state that the year --
19 the last year of my tender at the Legal Services
20 Branch, the position of Special Negotiator, Native
21 Issues was created and it was occupied by Mr. Alan
22 Stewart and that was a one-year assignment.

23 At the end of that one year, I took over
24 that position, but there was a period of time where the
25 two of us sort of had a period of overlap.

1 Q. I see. But insofar as the Ministry's
2 administrative structure is concerned, that category no
3 longer exists either?

4 A. Special Negotiator, Native Issues?

5 Q. Right.

6 A. That's correct.

7 Q. Okay. And today you are a
8 Co-ordinator and you have given evidence I believe as
9 to why that transition took place?

10 A. Yes.

11 Q. What I want to ask is: What exactly
12 is left; there is you obviously?

13 A. Yes.

14 Q. And you have described your position.
15 Who else in the Ministry deals with native questions?

16 A. All of us do.

17 Q. Okay. So this is what you mean when
18 you say it has been decentralized?

19 A. There are some employees at the
20 Ministry of Natural Resources that deal exclusively
21 with native issues.

22 Q. I want to know who they are, that's
23 the question?

24 A. Okay. There is myself, there is a
25 policy officer who currently works for our outdoor

1 recreation group.

2 Q. And he works exclusively in regard to
3 native issues or native matters?

4 A. That's correct.

5 Q. Yes. Go on, please?

6 A. And there are two positions in our
7 Land and Waters group that work exclusively on native
8 issues. One of them is filled at the present time and
9 the other one will probably be filled in the next few
10 weeks.

11 Q. The duties of those two positions,
12 are they similar to some of the things that the Office
13 of Indian Resource Policy used to do?

14 A. Some of the functions, I suppose,
15 that the Office of Indian Resource Policy carried on
16 will be carried on by those two positions.

17 I think as Co-ordinator of Native Issues,
18 one of my chief responsibilities is to co-ordinate the
19 efforts of those individuals who I have mentioned, as
20 well as our field staff and as well as providing
21 liaison with other ministries.

22 Q. Could you just outline very briefly
23 what jobs those two positions entail, the ones that you
24 have just referred to?

25 A. I think in general, working on lands

1 issues which relate to native people. They are the
2 public land component of the native issues, that's
3 their function.

4 Just as the other gentleman I mentioned,
5 his function is to provide direction on native issues
6 which relate to outdoor recreation issues: fishing,
7 hunting, trapping, that sort of thing.

8 Q. Okay. So you have mentioned
9 yourself, the policy officer and the outdoor recreation
10 group, the two positions in the Lands and Waters group,
11 one of which is filled, any others within the Ministry?

12 A. Whose work is full time related to
13 native issues?

14 Q. Yes.

15 A. And I take it that you are not
16 including support staff, you know, clerical or
17 secretarial staff who would be working full time on
18 those issues, but not necessarily in a policy directive
19 kind of role?

20 Q. I was including them.

21 A. Oh, you would be including them?

22 Q. Yes.

23 A. I think there might be three or four
24 others who fall into that category.

25 Q. Would that be it?

1 A. Who work exclusively on native
2 issues?

3 Q. Yes.

4 A. Yes.

5 Q. Now, there is no reference -- well,
6 we will get to that in a minute.

7 When did you, in your capacity as
8 Co-ordinator of Native Issues, or anyone within the
9 Ministry now take the leading role in relation to
10 native issues? Is there any case where that happens or
11 has it all evolved over to the other ministry in terms
12 of the leading role?

13 A. In relation to resource -- natural
14 resource-based negotiations such as fishing, trapping
15 hunting, what we call sectoral agreement negotiations,
16 the Ministry of Natural Resources maintains a lead role
17 in respect of those negotiations.

18 In a few land claims, because of some of
19 the experience that I have had, I have been asked to
20 conduct a few land claim negotiations and I do take the
21 lead on those land claim negotiations, but I should say
22 that in that capacity I think it is fair to say that I
23 am an agent of the Ontario Native Affairs Directorate.

24 But I certainly use some of the resources
25 that are available to me at the Ministry of Natural

1 Resources to help in the conduct of those land claims
2 negotiations. So it is, I would say, sectoral
3 agreement negotiations and a few Indian land claims.

4 On the latter, I am not sure that you
5 could really say that MNR is in the lead because I am
6 really acting as an agent of ONAD.

7 Q. Okay. Would it be fair to say then
8 that the former land claims role, leading role of the
9 Ministry of Natural Resources has now been transferred
10 to another ministry?

11 A. Yes, the primary responsibility for
12 addressing land claims within the Ontario government
13 has been transferred to the Ontario Native Affairs
14 Directorate.

15 Q. But retained within the Ministry is I
16 think what you have referred to as sectoral -- I am not
17 sure, sectoral issues perhaps?

18 A. Sectoral. There is no magic in that
19 word, discussions and negotiations on native resource
20 issues.

21 Q. Fishing, hunting, trapping and wild
22 rice I think are...

23 A. I think that just about captures it
24 it. I am not...

25 Q. Okay. In those areas, you have

1 identified yourself as being involved in them for some
2 considerable time. Are there any settlements,
3 settlements with Indians in fishing, hunting, trapping
4 or wild rice?

5 A. Any final settlements, no.

6 Q. Well, could I ask you your opinion as
7 to why --

8 A. Well, let me qualify that. I believe
9 that there are on fishing a few local agreements. I
10 believe that there is one with a band in the Parry
11 Sound District. It is a local agreement with that
12 band, that is one fishing agreement which has been
13 concluded. Perhaps the name of the band will come to
14 me later on.

15 Q. All right. My question is: Can you
16 express an opinion as to why generally speaking there
17 are no final settlements in these areas?

18 A. Well, dealing with wild rice first, I
19 think that one of the reasons more progress has not
20 been made in respect of wild rice negotiations has, to
21 some extent - and I don't attribute all of the reason
22 to this - but I think to some extent Grand Council
23 Treaty No. 3 has not come forward with certain
24 proposals that they might have done. They haven't been
25 as active in those negotiations as they might have

1 been.

2 Q. Let's just deal with that then and we
3 can go on to any other part of your answer later, but
4 we might get lost if we don't stick to them one at a
5 time.

6 A. Okay.

7 Q. You had begun with wild rice.

8 A. Okay.

9 Q. I would like to show you a document.
10 Do you recognize that?

11 A. I wonder if you could place it in
12 context for me, I am not sure that I do recognize it.

13 Q. Well, recognizing, sir, that in some
14 years the wild rice issue has produced more paper than
15 rice, I suggest to you that this is Ontario's
16 negotiation position which has been on the table since
17 August, 1979, has never been taken off the table and is
18 so unreasonable from the point of view of Treaty 3 that
19 that's the reason there has been no progress.

20 I am quite surprised that --

21 A. Well, Mr. Colborne, I know that you
22 are involved in these negotiations and I know that you
23 are aware of the fact that the last meeting - and I
24 don't know that this discussion ought to degenerate to
25 the level of at the last meeting this is what was

1 said --

2 Q. Excuse me. I agree, it shouldn't. I
3 have not been involved in these negotiations, so--

4 A. I see, okay. Well then --

5 Q. --I just want you to identify
6 Ontario's position.

7 MR. COLBORNE: And, Mr. Chairman, may I
8 tender this. I guess it would have to be subject to
9 further identification because this gentleman, I don't
10 think has identified it, but I will be calling evidence
11 on this and this document will be identified.

12 THE CHAIRMAN: Do you have any
13 disagreement, Mr. Freidin, if it came in now subject to
14 later proof?

15 MR. FREIDIN: I have no objection to it
16 being entered as long as it is understood -- well, I
17 guess the record will speak for itself.

18 THE CHAIRMAN: I think it should be
19 entered at this time subject to later proof by a
20 witness called by Mr. Colborne to so identify.

21 Exhibit 219.

22 ---EXHIBIT NO. 219: Photocopy of Government of Ontario
23 document.

24 MR. FREIDIN: Perhaps Mr. Colborne can
25 advise whether that document is a document which either

1 you or your client drew up to put this information
2 before the Board or whether this is a piece of paper
3 which was actually prepared by the Province of Ontario
4 and given to somebody in the form in which it has been
5 filed.

6 MR. COLBORNE: The latter. I wouldn't
7 have introduced the document in the manner that I did
8 if I had drawn it up or my client had. This originates
9 from the Government of Ontario, it is admittedly a
10 photocopy. I doubt if anybody knows where the original
11 is now.

12 MR. CRYSTAL: Mr. Colborne, you are
13 probably also aware of a draft memorandum of
14 understanding on wild rice that Grand Council Treaty 3
15 and Ontario worked on work on for some time and I think
16 that perhaps that's -- I don't have a copy of that with
17 me today - but I think that may, to some extent, be
18 representative of the tenure of the discussion that has
19 taken place on the issue, probably more so than this
20 document.

21 MR. COLBORNE: Q. Well, I can't give
22 evidence here and I won't, but -- and I won't answer
23 your question.

24 But perhaps I could return to the
25 question that got this exchange going. I asked you if

1 you could express any opinion in general terms about
2 why there were no settlements and you, sir, started
3 with wild rice and said: Well, it is somebody else's
4 fault. I really want to get into not who said what at
5 meetings or whose fault it is.

6 A. Yes.

7 Q. But generally, what is the overall
8 problem as between Ontario and Indians on these
9 questions.

10 A. Okay. Well, I think that it varies
11 from resource sector to resource sector and I think
12 that, for example, the outstanding issues in respect of
13 wild rice might be different than those in respect of
14 fishing, and I can give you an answer as to why I don't
15 think there has been more progress on fishing to date.

16 Q. Well, let's try that one, but I
17 repeat, I am looking hopefully for some more general
18 views from you on what are the underlying problems but
19 go ahead, give me what you want to give me on fishing.

20 A. I think that in respect of fishing --
21 I think that in respect to many of these issues, maybe
22 it is the general answer that you are seeking, the
23 Government of Ontario is placed in a position of having
24 to balance interests and it is placed in a position of
25 having to balance, albeit very special interests, of

1 native people in the province against the interests of
2 the general public and I think that there is fertile
3 grounds on which a balance can be struck.

4 But to date, on fishing for example,
5 there have been two attempts to try to reach agreement
6 on an Indian fishing agreement, not at a local level
7 but on a more universal level and, in both instances,
8 in 1982 and I believe 1987, government was met with
9 very strong non-native reaction.

10 Q. The white people didn't want the
11 Indians to have any special rights, right?

12 A. I think that -- I don't know that it
13 is fair to say that all of the white people.

14 Q. Oh, I don't think it is either. That
15 was your perception though, wasn't it, yours
16 collectively not yours individually?

17 A. I don't know that I would categorize
18 it necessarily as white either. I think that it is
19 fair to say that there was -- and as, you know, I would
20 appreciate also that if I make a comment that that be
21 the comment for the record.

22 I think my comment was that in respect of
23 both of those initiatives, the Government of Ontario
24 was met with strong negative reaction from non-native
25 people and that government of Ontario believes that it

1 is necessary to balance the interests of all the people
2 that are involved giving, nevertheless, special status
3 to First Nations of Ontario.

4 Q. Well, sir, that is a nice way to put
5 it, but isn't this political, the white people were
6 perceived--

7 A. It is not a nice way to put it, it is
8 the way the Government of Ontario --

9 Q. --were perceived to have more votes
10 and it was something that was in the political arena;
11 was it not?

12 A. I suppose there are political
13 overtones to many things that the government does, that
14 is the nature of government.

15 Q. And just continuing with that fishing
16 thing, so am I right that Ontario basically withdrew
17 from the talks for two years?

18 A. No, you are wrong, you are very wrong
19 if that is what you think.

20 Q. Oh, well, we will be hearing evidence
21 from other persons. So you tell me what has happened
22 with fishing in relation to Treaty 3 in the last two
23 years, give me your version? When was the last meeting
24 of the parties?

25 A. March of this year. I met with

1 representatives of Grand Council Treaty No. 3 and
2 federal government. I believe it is March of this
3 year. I can undertake to provide you an exact date.

4 Q. And was that to do with the
5 substantive question before the parties?

6 A. That was to do with the sort of
7 exchange of information that you were asking Mr.
8 Kenrick, whether or not that would be a good thing. It
9 had to do with the parties coming to an understanding
10 of one another as to what issues might be best served
11 in these negotiations. I think it is fair to call it a
12 preliminary meeting.

13 Q. And before that? May I suggest --

14 A. I couldn't, you know, I had my -- I
15 might be able to provide you with some other days. I
16 am not sure that they will be particularly helpful or
17 relevant.

18 Q. Well, sir, did you need to use the
19 word days in the plural? Am I not correct that there
20 has only been one substantive meeting that took place
21 in August of 1986, that would be before your
22 appointment, I agree.

23 A. Yes, I am not aware.

24 Q. Well, anyway, I --

25 A. But let me -- you asked me what is

1 going on with fishing and perhaps I could provide with
2 some information on that.

3 When non-native people made it clear that
4 they wanted to participate in the process, they wanted
5 their voice to be heard in this exercise, the
6 Government of Ontario established an advisory committee
7 composed of non-status people to advise - when I say
8 non-status people, I mean that in the sense of people
9 who were not status Indians and that would include
10 non-native people of European ancestry, also included
11 somebody from the Ontario Metis and non-status Indian
12 Association - to advise the government on what elements
13 would be appropriate for an Indian fishing agreement.

14 That group was given a period of one
15 year, actually it was given eight months but it
16 stretched out to almost a year now, it will be a year
17 in October, to provide a report to government on those
18 elements. And I believe that that report has just been
19 very recently submitted. I haven't spent too much time
20 in Toronto in the last few days. If it hasn't been
21 submitted in the last few days, it will probably be
22 submitted in the next few days.

23 The Government of Ontario has maintained
24 its commitment to negotiate Indian fishing agreements
25 with First Nations in Ontario and, furthermore, during

1 the period when this advisory committee was meeting,
2 the Government of Ontario proposed to native parties
3 that the time could be usefully spent entering into the
4 sorts of discussions that I described before with
5 government explaining to the Indian people its
6 rationale and its goals and objectives, the Indian
7 people explaining those same sorts of issues to
8 government, so that when negotiations could
9 substantively begin after this report had been
10 delivered, we would not be starting from ground zero in
11 terms of common understanding.

12 Some First Nations accepted that
13 proposal, Grand Council Treaty No. 3 did not in
14 general.

15 Q. And that is your version of the
16 facts, the salient facts that have to do with the
17 question asked?

18 Very well, if it is, that is fine, it's
19 on the record.

20 A. I am not sure why you asked me that
21 question, that is my version of the facts, as if to say
22 that there are different versions and this is only one.

23 You haven't asked me whether that was my
24 version of the facts on my other answers. I am not
25 quite sure why -- of course, it is my version of them,

1 everything that I say is my version.

2 Q. Because you are a former prosecutor,
3 you know that this is an adversarial process we are
4 talking about, you know that your Ministry is perceived
5 as the adversary of the Indians with treaty rights.

6 THE CHAIRMAN: Well, just hold on a
7 second, Mr. Colborne.

8 We are operating in the adversarial
9 format, to some extent, but this Board also has a duty
10 to have the facts presented. We are not as much
11 interested in whether or not adversarial points are
12 scored by one party or another, as to having all of the
13 information before us.

14 Mr. Crystal has presented to us what he
15 believes to be the facts concerning the issue and the
16 question that you asked and you will certainly have the
17 opportunity, in due course, to present evidence by
18 someone else which may or may not contradict those
19 facts.

20 MR. COLBORNE: Quite true.

21 THE CHAIRMAN: But I do not think it is
22 productive for the hearing to get involved in a
23 discussion about the adversarialness, if I might put it
24 that way, of the process.

25 MR. COLBORNE: Perhaps I was

1 misunderstood, Mr. Chairman. I was referring to the
2 relationship between the Ministry of Natural Resources
3 and status Indians generally, but more especially I
4 suppose my clients in relation to fishing.

5 I was inviting the witness to advise me
6 whether he considered that relationship to be an
7 adversarial one, I wasn't referring to these
8 proceedings.

9 THE CHAIRMAN: I am sorry, I might have
10 misunderstood your question then.

11 MR. COLBORNE: Q. And it could very
12 well, Mr. Crystal, have gotten lost in the verbiage so
13 I will just ask you that. Do you understand your
14 dealing with status Indians on questions such as
15 fishing as being essentially adversarial?

16 MR. CRYSTAL: A. I think that in some
17 exercises there is certainly an adversarial flavour and
18 in other exercises I think that there is more
19 cooperation than in others.

20 Q. Do you agree that to any extent the
21 underlying problem in the types of exercise that we
22 have been discussing is one that might be called one of
23 ownership or one of jurisdiction?

24 Do you think there is that underlying
25 type of problem or the flavour of that problem in any

1 of these topics: fishing, hunting, trapping, and wild
2 rice.

3 A. Do I think that there is a
4 disagreement between government and Indian people as to
5 whether or not Indian people ought to have jurisdiction
6 or greater jurisdiction in those matters? I think
7 there is a difference of opinion on that, yes, I do.

8 Q. Yes. Do you think that is important
9 or not important in the general scheme of things in
10 terms of these issues?

11 A. I think it is very important.

12 Q. Just a couple of clarification
13 questions from your longer version Curriculum Vitae.
14 At page 20 you refer to an Indian fishing agreement
15 committee. Is that the one that you referred to just a
16 few moments ago?

17 A. What paragraph is that, Mr. Colborne?

18 Q. Oh, that would be in the fifth full
19 paragraph on page 20, the first line.

20 A. Yes.

21 Q. Indian fishing agreement committee,
22 that is the committee of none-status Indian -- or
23 persons who were not status Indians?

24 A. Yes. Sometimes that group is
25 referred to as the advisory committee on Indian fishing

1 agreements for northern Ontario. I have heard it
2 referred to from time to time as that and sometimes the
3 acronym IFAC is even used.

4 Q. In that same paragraph there is
5 referred to something called Ontario government team
6 working on the development of a wild rice policy.

7 A. Yes.

8 Q. What is that?

9 A. What is what? The team, the policy
10 or what?

11 Q. Well, just tell me more. I have read
12 to you the string of words that appear there. I would
13 like you to tell me who in terms of position or names
14 are in this team or on this team and what do they do?

15 A. The team is composed of a
16 representative from the Ontario Ministry of Natural
17 Resources, the Ontario Ministry of Agriculture and
18 Food, Ontario Native Affairs Directorate, and Ministry
19 of Northern Development and Mines, and we have worked
20 towards development and policy on wild rice and that
21 policy development process is ongoing.

22 Q. And that team is still in existence?

23 A. I must say it has been a few months
24 since the last time that it met, but all the members
25 are still there and I think all the members still

1 consider themselves to be members of that team, yes. "

2 Q. Sir, in the written Curriculum Vitae
3 materials filed, there is no reference that I could see
4 to the Ontario Native Affairs Directorate in terms of
5 your current duties.

6 But, in contrast, under direct
7 examination Mr. Freidin brought out quite forcefully
8 that you have a continuing and extensive relationship
9 with that office.

10 My question to you is: Why was there no
11 mention of that in the entire seven pages of your
12 curriculum vitae material and why did it sort of arise
13 in oral evidence instead?

14 You said, for instance, that your written
15 materials were worked on to some extent by that
16 Directorate, you said that you have a fairly extensive
17 on-going relationship with that Directorate and so on
18 and so forth in your oral evidence but nothing in the
19 written materials.

20 A. It should have been included. I
21 think that is something that I have said I think a few
22 times that I am responsible for liaison with other
23 ministries and I include the Ontario Native Affairs --
24 I am surprised actually upon examining it that it is
25 not there, it should have been included.

1 Certainly, I do have liaison with other
2 ministries within the Ontario government and a very
3 fairly regular contact with the Ontario Native Affairs
4 Directorate.

5 Q. Generally speaking, is that contact
6 positive?

7 A. I would like to think so.

8 MR. COLBORNE: Mr. Chairman, it may not
9 be the least bit evident but I have sort of reached a
10 natural break.

11 THE CHAIRMAN: Well, I think it is now
12 six o'clock. I think this would be an appropriate
13 time, it has been a long day, for us to break and we
14 will commence tomorrow morning at 9:30 because we will
15 be sitting for a full day.

16 Thank you.

17 ---Whereupon the hearing adjourned at 6:00 p.m., to
18 reconvene on Thursday, September 15th, 1988,
19 commencing at 9:30 a.m.

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